IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John H. Auld & Brothers Company and GCA, L.P., and Howard S. Auld & Associates, and Allison Park Real Estate, Displaced Tenants	:	
	:	No. 2310 C.D. 2011
v.	:	
	:	Argued: November 13, 2012
The Township of Hampton	:	
Appeal of: GCA, L.P.	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: December 19, 2012

GCA, L.P. (GCA) appeals from the November 16, 2011 order of the Court of Common Pleas of Allegheny County (trial court), which made final the court's June 18, 2009 order denying GCA's motion for leave to file preliminary objections nunc pro tunc to the declaration of taking filed by the Township of Hampton (Township). GCA contends that it proved cause sufficient to permit the untimely filing of preliminary objections because the only individual authorized to act on GCA's behalf did not receive actual notice of the declaration until after the time for filing preliminary objections had passed. GCA also argues that the trial court abused its discretion in admitting evidence that violated the attorney-client privilege. Finding no merit in GCA's contentions, we affirm.

GCA is the sole title owner of property located in Allison Park, Allegheny County, Pennsylvania (Property). The Property was owned previously by Gladys Auld, who conveyed all of her interest in the Property to GCA for estate planning purposes. GCA is a limited partnership. The limited partners are Howard S. Auld and Sondra Schwartz, and the general partner of GCA is Auld Corner Company, LLC (Auld Corner). The only member of Auld Corner is Judith Kantor, Gladys Auld's niece. Judith Kantor resides in Rockville, Maryland. (Reproduced Record (R.R.) at 417-18; Trial court op. at 8-9.)

GCA hired Gladys Auld and her company, Allison Park Real Estate, to manage the Property. GCA admits that as part of her duties, Gladys Auld performed much of the day-to-day management of the Property and that she has signed and verified litigation pleadings as the "Manager" of GCA. (GCA's brief at 9; R.R. at 447-48, 503.)

The Township sought to condemn the Property in an eminent domain proceeding and filed a declaration of taking on December 18, 2008. By certified mail dated January 5, 2009, the Township sent notice of condemnation to GCA at the Property, its last known business address.[1] Donna Barch, a secretary for Howard S. Auld & Associates, a tenant on the Property, signed for the mailing and delivered it to Gladys Auld by January 6, 2009. As early as January 1, 2009, Gladys Auld hired Attorney Mitchel Zemel to represent GCA in the eminent domain proceedings. On

[1] Under the Eminent Domain Code, within 30 days after the filing of the declaration of taking, the condemnor must give written notice of the filing to the condemnee. Section 305(a) of the Eminent Domain Code, 26 Pa. C.S. §305(a). A condemnee is defined as "[t]he owner of a property interest taken, injured or destroyed." Section 103 of the Eminent Domain Code, 26 Pa. C.S. §103(a). "The notice shall be served, within or without this Commonwealth, by any competent adult in the same manner as in a civil action or by registered mail to the last known address of the person being served." 26 Pa. C.S. §305(b)(1).

January 20, 2009, Attorney Zemel officially entered his appearance on behalf of GCA. During the months of January and February, Attorney Zemel had conversations with Gladys Auld regarding the eminent domain proceedings and engaged in conversations and correspondence with the Township's attorney. (R.R. at 2-34, 88, 91, 508.)

Section 406(a) of the Eminent Domain Code permits a condemnee to file preliminary objections to a declaration of taking within 30 days of being served with a notice of condemnation. 26 Pa. C.S. §406(a).[2] GCA was obligated to file preliminary objections on or before February 4, 2009. On May 6, 2009, Attorney Shawn Flaherty praeciped to substitute counsel and entered his appearance as attorney for GCA. On May 13, 2009, GCA filed a Motion for Leave to File Preliminary Objections Nunc Pro Tunc, which was amended on June 5, 2009. In the amended motion, GCA alleged that: Gladys Auld lacked the authority to act on GCA's behalf or to retain Attorney Zemel as counsel; Kantor, as the general partner of GCA, was the only person who had authority to hire counsel; and Judith Kantor was not informed of the taking or notified of her right to file preliminary objections until well after the deadline to file had passed. (R.R. at 37-39, 117-19.)

The trial court conducted a hearing. At the hearing, Attorney Zemel testified, over objection by GCA on grounds of attorney-client privilege, that he discussed the possibility of filing preliminary objections, ostensibly with Gladys Auld

[2] Pursuant to section 406(b) of the Eminent Domain Code, preliminary objections are limited to and are the exclusive method of challenging: (i) the power or right of the condemnor to appropriate the condemned property unless it has been previously adjudicated; (ii) the sufficiency of the security; (iii) the declaration of taking; (iv) any other procedure followed by the condemnor. If these issues are not raised by way of preliminary objections, then they are waived. 26 Pa. C.S. §406(b).

and Kantor.[3] Attorney Zemel admitted that he did not get authorization from Auld Corner, via Kantor, to represent GCA in the eminent domain proceedings. However, Attorney Zemel testified that he spoke to Gladys Auld, Howard S. Auld, and Sondra Schwartz, who gave him authorization to represent GCA and led him to believe that they were the only partners of GCA. (R.R. at 352-54, 368-69.)

Kantor testified that she did not authorize Attorney Zemel to represent GCA in the eminent domain proceedings and that Gladys Auld was not authorized to hire legal counsel on behalf of GCA. Kantor testified that she met with Gladys Auld and Attorney Zemel on March 17, 2009, and this was the first time Attorney Zemel informed her that preliminary objections could be filed.[4] According to Kantor, at the end of the meeting, she understood that Attorney Zemel would send her a letter of representation and thereafter draft preliminary objections. Kantor testified that because she did not receive a letter from Attorney Zemel until April 17, 2009, she decided to obtain other counsel. (R.R. at 384-87, 396-98.)

Gladys Auld testified that she was the "manager" of GCA and could "go ahead and do what [she] wanted with it, pretty much." Gladys Auld further testified that she received the consent of Kantor to hire Attorney Zemel for the condemnation proceedings. (R.R. at 457-58, 483-84.)

[3] The question was posed to Attorney Zemel on direct-examination in a manner that sought to avoid disclosing the identity of those with whom Attorney Zemel spoke and the details of the discussion.

[4] There is nothing in the record to establish when Kantor was first informed that Township planned on taking the property or instituting eminent domain proceedings.

On June 18, 2009, the trial court denied GCA's motion for leave to file preliminary objections nunc pro tunc.[5] In pertinent part, the trial court reasoned as follows:

> This Court recognizes the legal entity known as [GCA], and the fact that Kantor has legal authority over this organization. However, it is disingenuous to hide behind this corporate ruse when the testimony clearly indicates that [Gladys] Auld, for all intents and purposes, controlled this property and acted as its authorized agent. To charge [the Township] or any municipality with a duty to investigate multiple corporate filings to uncover the existence of Kantor in Rockville, Maryland, would be unreasonable, while at the same time [Gladys] Auld is holding herself out to members of [the Township] and Attorney Zemel as the property owner, to the extent that Attorney Zemel was authorized and paid to enter his appearance for GCA.
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> * * *
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> Additionally, this Court considered whether [the Township] is partly responsible for the delay, as this would be a factor in the decision whether to allow the filing of preliminary objections nunc pro tunc. This Court finds no failure on the part of [the Township] in their [sic] service to condemnees.
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> [T]he credible testimony showed that Gladys Auld was aware of a proposed taking well prior to the actual filing of the Declaration; at all times prior to the taking Gladys Auld was an authorized agent of GCA, [and she was] authorized to accept service for GCA. …

(Trial court op. at 9, 11.)

On January 13, 2010, the Township filed a petition for appointment of a board of viewers, which issued a report on February 2, 2011, awarding GCA just

[5] GCA filed an appeal from that order, but this Court quashed it as interlocutory and non-appealable.

compensation in the amount of $651,000.00. The Township then filed an appeal to the trial court but withdrew the appeal on November 10, 2011. On November 16, 2011, the trial court entered judgment on the report of the board of viewers, and GCA filed a timely notice of appeal.[6]

On appeal, GCA concedes that the Township complied in all respects with the service and notice requirements of the Eminent Domain Code, in that service was properly effectuated at GCA's last known business address. GCA does not claim that its principal place of business was located somewhere other than the Property, and it does not dispute that Donna Barch and Gladys Auld were authorized to receive service on its behalf. In addition, GCA emphasizes that it is not in any way faulting Attorney Zemel for the filing of untimely preliminary objections.

However, GCA argues that it is a limited partnership and that only the managing partner, Auld Corner, through its sole member Kantor, is vested with authority to exercise control and management of the limited partnership's business. Citing Department of Revenue for Bureau of Accounts Settlement v. McKelvey, 526 Pa. 472, 587 A.2d 693 (1991), GCA contends that "notice to someone other than the general partner is, in general, ineffective notice to the limited partnership," thus suggesting that it was necessary for Kantor to receive individual, actual notice. (GCA's brief at 21.) GCA also claims that the "predominate weight of the testimony" showed that Gladys Auld did not have the authority to "act as agent for

[6] Pursuant to section 406(a)(2) of the Eminent Domain Code, "[t]he court upon cause shown may extend the time for filing preliminary objections." 26 Pa. C.S. §406(a)(2). The decision of a trial court as to whether cause was shown to justify an untimely filing of preliminary objections is reviewed using the abuse of discretion standard. Appeal of McCoy, 621 A.2d 1163, 1165 (Pa. Cmwlth. 1993). In cases where a hearing is held on a request for relief nunc pro tunc, this Court is bound by the trial court's credibility and weight determinations. Department of Transportation, Bureau of Traffic Safety v. Rick, 462 A.2d 902, 904 (Pa. Cmwlth. 1983).

GCA in the eminent domain proceeding." (GCA's brief at 22.) GCA emphasizes the fact that Gladys Auld was hired only as a property manager for the Property, notes that she had no ownership interest in the Property, and asserts that she exceeded her authority when she undertook the legal affairs of GCA in the eminent domain proceedings without having first received authorization from Kantor.

Similarly, GCA argues that Attorney Zemel lacked the authority to represent GCA in the eminent domain proceedings. GCA points to Kantor's testimony that she did not hire Attorney Zemel to represent GCA in these proceedings and did not authorize Gladys Auld to hire him. GCA also points out that Gladys Auld paid Attorney Zemel with her own money. Ultimately, GCA contends that the trial court's finding that Attorney Zemel had authority to represent GCA is "against the weight of the evidence." (GCA's brief at 26.)

Essentially, GCA's contentions do nothing more than challenge the trial court's weight and credibility determinations. Gladys Auld signed and verified legal pleadings as "Manager of GCA," and testimony established that she played a significant role in the day-to-day operations of GCA and was vested with broad discretion to make decisions on its behalf. (R.R. at 457-58, 503).[7] Further, the uncontroverted evidence shows that in a prior occupancy matter, Gladys Auld received permission from Kantor to hire Attorney Zemel. (R.R. at 421.) More importantly, Gladys Auld testified that she received express authorization from Judith Kantor to hire Attorney Zemel in the eminent domain proceedings. (R.R. at 483-84.) This evidence was found credible by the trial court and supports the determination

[7] Additionally, we note that Gladys Auld was the prior, sole owner of the Property and that she conveyed all of her interest in the Property to GCA as part of her estate planning; although Gladys Auld no longer owns title to the Property, the trial court found that "for all intents and purposes, [Gladys Auld] controlled [the Property]…." (R.R. at 417; Trial court op. at 9.)

that Gladys Auld was an authorized agent of GCA and had authority to hire Attorney Zemel to represent GCA in the eminent domain proceedings. Although Kantor testified that she did not provide Gladys Auld with such authority, conflicts in testimony are for the fact-finder to resolve. See Rick, 462 A.2d at 904. Because determinations of credibility and evidentiary weight are within the exclusive province of the trial court, this Court may not disturb these determinations on appeal. Id.

Moreover, assuming arguendo that Gladys Auld exceeded her authority in failing to forward the notice of condemnation to Kantor and in hiring Attorney Zemel, evidence of this conduct would not constitute good cause justifying the filing of untimely preliminary objections. Rather, such evidence would merely demonstrate negligence or, at best, an internal conflict within the business structure of GCA.

In Appeal of McCoy, 621 A.2d 1163, 1165 (Pa. Cmwlth. 1993), the condemnee received proper notice of the declaration of taking and hired counsel who did not obtain an extension of time to file preliminary objections and did not file preliminary objections within the 30 day time limit. The condemnee's counsel later withdrew his appearance, citing a conflict of interest, and the condemnee hired new counsel, who moved to file preliminary objections nunc pro tunc. The condemnee argued that it proved sufficient cause to permit the late filing of preliminary objections because former counsel failed to file timely preliminary objections, failed to obtain an extension of time in which to file, and failed to disclose a conflict of interest. This Court disagreed and held that inadvertence or negligence of counsel does not constitute the cause necessary to permit the filing of preliminary objections nunc pro tunc. Id. at 1165-66.

In Edgewood Building Co., Inc. Appeal, 402 A.2d 276 (Pa. Cmwlth. 1979), a condemnee/corporation filed preliminary objections approximately four days

late, and the trial court granted the township's motion to strike the preliminary objections because they were filed untimely. The condemnee/corporation argued on appeal that the trial court erred in striking its preliminary objections because the township sent the notice of condemnation to its last place of business by certified mail without "restrictive notation." That is, the condemnee/corporation claimed that the notice of condemnation was not specifically served on an officer, agent or employee of the condemnee/corporation in accordance with then Pa. R.C.P. No. 2180 (now Pa. R.C.P. No. 424), which provided that service on corporations shall be made on officers, persons in charge of an office, or persons expressly authorized to accept service.

On appeal, this Court rejected the condemnee's/corporation's argument. We highlighted the fact that service was proper under the Eminent Domain Code because the notice of condemnation was sent by certified mail to the condemnee's/corporation's last known address. We also stressed that it was unnecessary to serve the condemnee/corporation in compliance with Pa. R.C.P. No. 2180 and that the condemnee/corporation failed to explain how the township could have ascertained the identities of its officers, employees or agents. Therefore, this Court concluded that the condemnee/corporation did not provide a reasonable excuse for its delay in filing preliminary objections and upheld the trial court's order striking the preliminary objections as untimely.

Implicit in the holding of Edgewood Building Co., Inc. Appeal is the general proposition that any delay in a business entity's internal processing and/or handling of the notice of declaration is not a reasonable excuse for filing preliminary objections nunc pro tunc. This reading of Edgewood Building Co., Inc. Appeal is backed by strong support in analogous case law.

In Wert v. Department of Transportation, 468 A.2d 542 (Pa. Cmwlth. 1983), the petitioner was away at school and legal notice concerning revocation of his driver's license came to his address and an individual (who remained unnamed in the opinion) received the mail. The individual did not forward the notice to the petitioner but instead sought to resolve the matter by calling the Department of Transportation. The petitioner then attempted to file an appeal nunc pro tunc. On appeal, this Court reiterated that "if the delay results from the negligence of a third party whom the petitioner has chosen, the extension of time for appeal cannot be justified." Id. at 543. Accordingly, we concluded that the conduct of the individual in failing to forward the notice and in attempting to act on behalf of the petitioner did not justify the filing of an appeal nunc pro tunc because "a policy of extending appeal times on the basis of the negligence of a party's own agents would be logically insupportable, partly because it could encourage abuses." Id. See also Think Big v. Department of Labor & Industry, 702 A.2d 1154, 1156 (Pa. Cmwlth. 1997) ("[O]ur court has refused to allow an untimely appeal if the delay results from the negligence of a third party whom the appellant has chosen, or the appellant's own agents.").

In Milford Township Board of Supervisors v. Department of Environmental Resources, 644 A.2d 217 (Pa. Cmwlth. 1994), the department sent notice of its order by certified mail to the business address of the township's supervisors. An officer of the township signed a receipt for the mail on April 26, 1993. The township's supervisors filed an untimely notice of appeal on May 27, 1993. On appeal, the township's supervisors alleged that the officer did not give them the order until May 4, 1993, and, therefore, their notice of appeal should be deemed as being filed timely. This Court dismissed the argument, stating:

> In the present action, it is undisputed that notice of [the department's order] was mailed to the correct address…

> Thus, [the department sent] adequate notice regardless of whether [the township's officer] had been given authority to receive such notice on the [s]upervisors' behalf. The responsibility for the fact that the order was not forwarded to the [s]upervisors individually until eight days later cannot be placed on [the department]. Any prejudice which may have been created was a direct result of the [township's] actions, not those of [the department].

Id. at 219.

Relying on Wert and Milford Township, we conclude that Gladys Auld's alleged negligence in failing to forward the notice of condemnation to Kantor and in hiring attorney Zemel does not provide GCA just cause for the filing of untimely preliminary objections.[8] No matter how GCA describes Gladys Auld's conduct, as negligent or unauthorized, the fact remains that Gladys Auld was an agent of GCA and any mishandling on her part with respect to the eminent domain proceedings is attributable to GCA. If this Court were to permit the filing of preliminary objections nunc pro tunc based solely on the negligent and/or unauthorized conduct of an employee/agent, then we would encourage the same type of abuses that Wert sought to prevent.

In addition, we find no merit in GCA's argument that Kantor was entitled to receive individual, actual notice of the condemnation because she was the sole member of Auld Corner, the general partner of GCA.

In Farrell v. Board of Trustees, 440 Pa. 255, 269 A.2d 890 (1970), a plaintiff/union member obtained a default judgment against a trust fund in an action

[8] If GCA believes that Gladys Auld usurped authority or was not acting in the partnership's best interest, or if Attorney Zemel could not have reasonably viewed Gladys Auld, Howard S. Auld, and Sondra Schwartz as possessing apparent authority to hire him to represent GCA in the eminent domain action, then GCA's remedy may lie in an appropriate civil action against those parties.

to recover health and accident benefits that were allegedly due to him on a policy issued by the trust fund. The trust fund provided benefits for the members of all the union's local chapters, which were located in about half of the fifty states. However, the trust fund's only office was located in New Jersey, and the trust fund appointed a liaison to work out of Philadelphia to process claims made by the union's local chapter in Philadelphia and to forward them to the office in New Jersey. The plaintiff submitted his claim to the liaison in Philadelphia but the claim was denied. The plaintiff then filed a complaint against the trust fund and served it upon the liaison. When no responsive pleading was filed, a default judgment was entered against the trust fund and the trust fund petitioned to have the judgment open or stricken, contending that the liaison was not competent to receive service on behalf of the trust fund.

On appeal, our Supreme Court interpreted former Pa. R.C.P. No. 2157, now contained in Pa. R.C.P. No. 423,[9] which then governed personal service upon an unincorporated association or a partnership. In pertinent part, former Pa. R.C.P. No.

[9] In its entirety, Pa. R.C.P. No. 423(c) states:

> Rule 423. Partnerships and Unincorporated Associations
>
> Service of original process upon a partnership and all partners named in the action or upon an unincorporated association shall be made upon any of the following persons provided the person served is not a plaintiff in the action: (1) any partner, officer or registered agent of the partnership or association, or (2) an agent authorized by the partnership or association in writing to receive service of process for it, or (3) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the partnership or association.

Pa. R.C.P. No. 423(c) (emphasis supplied).

2157(a) stated that personal service on the trust fund could be effectuated by "[s]ervice of process upon . . . the manager, clerk or other person for the time being in charge of any place where such association regularly conducts any business or association activity…." Our Supreme Court found that the liaison was the person in charge of the Philadelphia office of the trust fund and that the liaison's duties established that the Philadelphia office was a place where the trust fund regularly conducted business. Because service was proper under former Pa. R.C.P. No. 2157(a), our Supreme Court affirmed the denial of the trust fund's petition to open or strike the default judgment. In doing so, the court declared:

> It is well-settled that the only constitutional constraints on service of process are that it must be reasonably calculated to give the served party knowledge of the attempted exercise of jurisdiction and a chance to be heard. It is clear that [No.] Pa. R.C.P. 2157(a) is well tailored to meet these requirements and that any service which is valid within the terms of the rule meets the constitutional requirements.

Farrell, 440 Pa. at 258 n.2, 269 A.2d at 892 n. 2.

In Cintas Corporation v. Lee's Cleaning Services., 549 Pa. 84, 700 A.2d 915 (1997), our Supreme Court interpreted a similar rule of civil procedure, Pa. R.C.P. No. 424, which governs service of original process on a corporation.[10] The court stated that "the purpose of the rule is to satisfy the due process requirement that a defendant be given adequate notice that litigation has commenced." Cintas

[10] Pa. R.C.P. No. 424 is like Pa. R.C.P. No. 423 and permits service of an action against a corporation on: "(1) an executive officer, partner or trustee of the corporation …, or (2) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation …, or (3) an agent authorized by the corporation … to receive service of process for it." Pa. R.C.P. 424.

Corporation, 549 Pa. at 95, 700 A.2d at 919. The court also concluded that compliance with Pa. R.C.P. No. 424 establishes "a sufficient connection between the person served and the defendant [i.e., the corporation] to demonstrate that service was reasonably calculated to give the defendant notice of the action against it." Id. at 96, 700 A.2d at 920. Therefore, under Cintas, if service is effectuated on a corporation's manager in accordance with Pa. R.C.P. No. 424(2), the service is reasonably calculated to give the corporation, as a legal entity, notice of the action against it. See Pa. R.C.P. No. 424(2).

By necessary implication, the Rules of Civil Procedure governing service upon a partnership or corporation adopt the concept of agency law that an agent acts on behalf of a principal and that service on an appropriate agent is deemed to be service upon the principal. "In accordance with a well-established rule of the law of agency, a corporation is bound by the knowledge acquired by, or notice given to, its officers or agents which is within the actual or apparent scope of their authority or employment and which is in reference to a matter to which their authority or employment extends." Department of Transportation, Bureau of Traffic Safety v. Michael Moraiti, Upper Darby Auto Center, Inc., 382 A.2d 997, 998 n. 2 (Pa. Cmwlth. 1978). See also Fidelity Bank v. Pierson, 437 Pa. 541, 543, 264 A.2d 682, 684 (1970) (stating that a principal will be charged with the information and knowledge of an agent even if the principal did not receive the information); Callahan v. Keegan, 419 A.2d 1241, 1243 (Pa. Super. 1980) ("When [now Pa. R.C.P. No. 423] was enacted it adopted an 'entity' concept of a partnership and provided that service upon a partner (or certain other enumerated persons) shall be deemed service upon the partnership and upon each partner individually named in the action.").

Applying the above precepts of law to this case, the evidence established that Donna Barch, secretary of Howard S. Auld & Associates,[11] signed for the notice of condemnation and forwarded it to Gladys Auld. In turn, Gladys Auld was the "manager" of the Property and she properly accepted service on behalf of GCA in accordance with Pa. R.C.P. No. 423(3) as "the manager … of any regular … activity of the partnership….." Therefore, notice of the condemnation to Gladys Auld was reasonably calculated to give GCA notice of the action against it, and any due process concerns related to the adequacy of the notice were obviated. See Cintas, 549 Pa. at 96, 700 A.2d at 920; Farrell, 440 Pa. at 258 n.2, 269 A.2d at 892 n. 2. See also Commonwealth v. One 1991 Cadillac Seville, 853 A.2d 1093, 1095-97 (Pa. Cmwlth. 2004) (finding that service by certified mail to petitioner that was signed and accepted by someone with apparent authority to accept service on the petitioner's behalf satisfied the requirements of procedural due process). Also, by virtue of agency law, Gladys Auld's acceptance of the notice constituted notice to GCA itself. See Moraiti, 382 A.2d at 998 n. 2; Callahan, 419 A.2d at 1243. See also North Star Coal Company v. Teodori, 442 Pa. 583, 277 A.2d 154 (1971) (concluding that service of mortgage foreclosure complaint against a dissolved partnership on a secretary "in charge" of one partner's private office constituted adequate notice on an absent and withdrawn partner because service on the secretary amounted to service upon the partnership as a business entity, which continued in existence even though dissolved).

GCA's reliance on McKelvey for the proposition that a general partner should receive actual, personal notice of the filing of a declaration is unavailing. In that case, the general partner received notice of a tax assessment but did not inform the limited partner. Our Supreme Court concluded that a limited partner was entitled

[11] We reiterate that Howard S. Auld is a limited partner of GCA.

to actual notice of a tax assessment and that the general partner's notice could not be imputed to the limited partner because a limited partner does not take part in the control or management of the partnership and is not personally liable for the debts of the limited partnership. Because the Department of Revenue wanted to place a lien on the personal assets of the limited partner for the debts of the limited partnership, our Supreme Court concluded that the limited partner was entitled to actual, personal notice. See also In re Lawrence County Tax Claim Bureau, 998 A.2d 675, 679-80 (Pa. Cmwlth. 2010) (discussing nature of a limited partnership and the rights and liabilities of general and limited partners).

An important distinction between McKelvey and this case is that McKelvey only addressed the requirement of actual, personal notice to a limited partner, and by implication to a general partner,[12] where the underlying nature of the legal proceedings attempted to secure the personal assets of a partner to satisfy the partnership's debts. Unlike the tax assessment and lien procedure in McKelvey, the eminent domain proceeding in this case does not seek to obtain Kantor's personal assets, but instead, attempts to condemn a building whose sole title owner is GCA. (R.R. at 417-18). See section 8313(c) of the Uniform Partnership Act, 15 Pa. C.S. §8313(c) (providing that title to real property may be owned in the partnership name); section 8504 of the Revised Uniform Limited Partnership Act, 15 Pa. C.S. §8504 (incorporating section 8313 to apply to limited partnerships). Because the Township is not trying to place a lien on Kantor's personal assets and is not seeking to satisfy any kind of debt owed by GCA, McKelvey's discussion of personal, actual notice has no application to this case. See 37 P.L.E. PARTNERSHIPS §165 (stating that

[12] While a limited partner is not personally liable for the debts and obligations of a partnership, a general partner is. In re Lawrence County Tax Claim Bureau, 998 A.2d at 679.

individual service on a partner is required only when the action seeks to bind the personal assets of the partner).

Even if the law required that Cantor receive personal, individual notice, we would conclude that GCA has not demonstrated sufficient cause to file preliminary objections nunc pro tunc. Akin to the condemnee in Edgewood Building Co., Inc. Appeal, GCA was the moving party with the burden of proof, and it did not establish that the Township could have reasonably ascertained that Auld Corner was the general partner of GCA, that Kantor was the sole member of Auld Corner, and that she resided in Rockville, Maryland. Due process only requires a reasonable effort to provide notice to a person, and if a reasonable effort to locate Judith Cantor would have been futile, other means of service upon GCA could be deemed a sufficient substitute for effectuating service. In the absence of evidence that the Township could have reasonably ascertained Kantor's identity and whereabouts, GCA could not demonstrate that the Township did not satisfy due process.

For these reasons, the trial court did not abuse its discretion in concluding that GCA failed to establish sufficient cause to justify the untimely filing of preliminary objections.

Finally, GCA also argues that the trial court erred when it permitted Attorney Zemel to answer a question by the Township's counsel that compelled the disclosure of a communication made between him and GCA as a potential client. We disagree.

Counsel for the Township asked Attorney Zemel if he discussed the "preliminary objections," to which Attorney Zemel replied "yes" without revealing with whom he spoke. (R.R. at 352). GCA objected on grounds that Attorney Zemel's testimony contravened the attorney-client privilege.

Assuming, without deciding, that the trial court committed evidentiary error, we conclude that the error was harmless. Later in the hearing, Kantor volunteered during direct-examination that Attorney Zemel talked to her over the phone about filing preliminary objections. (R.R. at 396-98). Gladys Auld also testified on cross-examination that on March 17, 2009, she and Kantor talked to Attorney Zemel about filing preliminary objections. (R.R. at 478-79). The testimony of both Kantor and Gladys Auld was properly admitted into evidence without objection. Because their testimony was cumulative of Attorney Zemel's allegedly improper testimony, the trial court's evidentiary error, if any, was harmless and had no effect on its decision. Muehlieb v. Philadelphia, 574 A.2d 1208, 1212 (Pa. Cmwlth. 1990) (concluding that evidence admitted erroneously amounted to harmless error where it was cumulative of other properly admitted evidence). Therefore, GCA's argument does not entitle it to relief.

For the above-stated reasons, we affirm the trial court's November 16, 2011 order, which made final its June 18, 2009 order denying GCA's motion for leave to file preliminary objections nunc pro tunc.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John H. Auld & Brothers Company and GCA, L.P., and Howard S. Auld & Associates, and Allison Park Real Estate, Displaced Tenants	:	
	:	No. 2310 C.D. 2011
v.	:	
The Township of Hampton	:	
Appeal of: GCA, L.P.	:	

ORDER

AND NOW, this 19th day of December, 2012, the November 16, 2011 order of the Court of Common Pleas of Allegheny County is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge