

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 7, 2015)

RICHARD J. CONTI

:

v.

:

C.A. No. PM 2002-3964

:

:

RHODE ISLAND ECONOMIC
DEVELOPMENT CORPORATION

:

:

DECISION

McGUIRL, J. In its September 29, 2014 decision in the above-captioned matter,¹ this Court awarded \$159,000 to Plaintiff Richard J. Conti (Mr. Conti) as compensation for the condemnation exacted by the Rhode Island Economic Development Corporation (the EDC)² of Smithfield Plat 49, Lot 102A (the Property). Now the Court turns to an assessment of prejudgment interest on this award.

I

Facts and Travel

The EDC, under its statutory authority pursuant to § 42-64-9, took the Property by eminent domain on May 1, 2002.³ In doing so, it valued the Property at \$141,000 and paid Mr. Conti accordingly. In this Court’s September 29, 2014 decision, such compensation was held inadequate and—based on expert testimony—the fair market value of the Property in relation to

¹ Conti v. Rhode Island Economic Development Corp., 2014 WL 4952178 (R.I. Super. Sept. 29, 2014).

² The title of the EDC has been officially changed by statute. See G.L. 1956 § 42-64-1.1 (stating that “[t]he corporation known as the ‘Rhode Island Economic Development Corporation’ shall now be known as the ‘Rhode Island Commerce Corporation’”). However, to avoid confusion and maintain consistency with the caption in this matter, the Court will continue to use its denomination as the EDC for the purposes of this Decision.

³ A detailed retelling of the facts surrounding the condemnation and ensuing contest over the proper valuation for the Property can be found in Conti, 2014 WL 4952178.

its lawful highest and best use was judged to be \$300,000 at the time of taking. As such, the “just compensation” due and owing to Mr. Conti “total[ed] \$159,000, with interest, from the date of the taking.” Conti, 2014 WL 4952178, at *9.

Now Mr. Conti moves for both prejudgment and postjudgment interest on this award, requesting twelve percent per annum statutory interest pursuant to G.L. 1956 § 9-21-10. The EDC responds that the payment of interest is inappropriate because, as a state agency, it is insulated from paying such interest under the doctrine of sovereign immunity. It further contends that even if it were required to pay interest, the interest would be calculated in accordance with G.L. 1956 § 37-6-23, which deals specifically with payment in the wake of a condemnation judgment. The parties agree that the difference in interest after utilizing these distinct rates is not insignificant: the accrued interest at twelve percent would result in an award that is more than \$200,000 greater than that calculated using the alternative rate. The Court addresses each issue in turn.

II

Discussion

A

Sovereign Immunity

Mr. Conti and the EDC disagree over the precise classification of the EDC with regard to its standing as a state agency for the purposes of the doctrine of sovereign immunity, which serves to “insulate[] the state from paying prejudgment [and postjudgment] interest[.]” R.I. Pub. Telecomms. Auth. v. Russell, 914 A.2d 984, 995 (R.I. 2007) (citing Reagan Constr. Corp. v. Mayer, 712 A.2d 372, 373 (R.I. 1998)). In the eyes of the EDC, it was a state actor in taking the Property by eminent domain, and, as a result, is immune from paying interest on the judgment.

However, Mr. Conti contends that sovereign immunity is inapplicable as the EDC is a public corporation that is legally separate and distinct from the state.

This quibble over classification, however, is of no moment. Even if the EDC represents an arm of the state, its claim to immunity has been waived. It is axiomatic that “the State may consent to be sued, and thus waive any sovereign immunity[.]” Capital Props., Inc. v. State, 749 A.2d 1069, 1081 (R.I. 1999) (citing R.I. Tpk. and Bridge Auth. v. Nugent, 95 R.I. 19, 29, 182 A.2d 427, 432 (1962)). Moreover, express statutory language will similarly constitute waiver of immunity as to the payment of interest relative to judgment. Reagan Const., 712 A.2d at 373.

Here, the Rhode Island Legislature has waived any sovereign immunity on the part of the EDC in providing that it can “be sued[.]” Sec. 42-64-6; see Reconstruction Fin. Corp. v. J.G. Menihan Corp., 312 U.S. 81, 84-85 (1941) (holding, for the purposes of sovereign immunity, that “when [the legislature] launched a governmental agency into the commercial world and endowed it with authority to ‘sue or be sued’, that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.” (quoting Fed. Hous. Admin., Region No. 4 v. Burr, 309 U.S. 242, 245 (1940))). Furthermore, specifically within the statute regarding condemnation actions by the EDC, our General Assembly has made clear that a “decision or verdict of the court [regarding the price to be paid in exchange for the taking of property] . . . shall be subject to all rights . . . as are provided by law.” Sec. 42-64-9. By making the judgment here subject to all rights provided by law, the legislature has waived the EDC’s immunity from paying interest. See Reagan Constr., 712 A.2d at 374 (finding explicit waiver of immunity to payment of interest where relevant statute provided that an adverse judgment “shall be ‘subject to all the provisions of law relating to a judgment in an action.’”

(quoting § 37-16-24) (emphasis in original). Accordingly, the sovereign immunity doctrine is inapplicable. Conti, 2014 WL 4952178, at *9 (awarding \$159,000 “with interest”).⁴

B

Interest Rate

Upon establishing that interest is indeed owed to Mr. Conti, this Court turns to a determination of the proper rate at which such interest has accrued. Mr. Conti contends that the general statute for interest on a civil judgment, § 9-21-10, is applicable, while the EDC asserts that interest should be calculated according to the rate as per § 37-6-23.⁵ Section 37-6-23 provides in relevant part:

“(a) If a petition for assessment of damages is filed, then the property owner shall be entitled to interest on the fair market value of the property taken by the *acquiring authority* from the date it is condemned to the day that judgment enters. Interest thereon shall be calculated on the fair market value of the property which

⁴ The EDC also contends that Mr. Conti was dilatory in pursuing the instant action and, as a result, should not be awarded prejudgment interest. However, the EDC has put forth nothing in support of such an assertion, save for reference to the court docket sheet. Indeed, without more evidence from the EDC, the Court finds such delay to likely be the result of protracted settlement negotiations.

⁵ The rate in § 37-6-23 is calculated accordingly:

“(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period from [sic] the date of taking at an annual rate equal to the weekly average one year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the taking.

“(2) Where the period for which interest is owed is more than one year, interest for the first year shall be calculated in accordance with subdivision (1) of this section and interest for each additional year shall be calculated on the combined amount of the principal and accrued interest at an annual rate equal to the weekly average one year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the beginning of each additional year.”

exceeds the amount offered by the acquiring authority pending final disposition of the court proceedings.” (Emphasis added.)

Mr. Conti and the EDC contest whether the EDC is an “acquiring authority” under the terms of this statute. An “acquiring authority” is defined as “any department, board, bureau, commission, or agency of the state government” undertaking a condemnation action. Sec. 37-6-5. Mr. Conti contends that because of the EDC’s “distinct legal existence from the state,” it cannot be considered an acquiring authority. Sec. 42-64-4(a). In further support of this contention, Mr. Conti points to § 37-6-6, which requires the EDC to review the proposed condemnation of any acquiring authority. Mr. Conti maintains that if the EDC were to be considered an acquiring authority, it would not be assigned to review all proposed acquisitions. Additionally, he asserts, that as the section outlining the rate to be paid by an acquiring authority states that “an execution . . . shall be forthwith paid by the general treasurer,” this rate cannot apply in light of the fact that the EDC holds its own distinct set of funds. Sec. 37-6-23(a).

“When construing a statute, our ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” S. Cnty. Post & Beam, Inc. v. McMahon, No. 2014-24-APPEAL, 2015 WL 3534116, at *8 (R.I. June 5, 2015) (quoting Mendes v. Factor, 41 A.3d 994, 1002 (R.I. 2012)). Here, § 37-6-5 defines “the acquiring authority” as “any department, board, bureau, commission, or agency of the state government.” While it is true that the EDC holds a “distinct legal existence from the state and [does] not constitut[e] a department of state government,” the General Assembly has specifically set forth that it is “a governmental agency and public instrumentality of the state.” (Emphasis added.) Sec. 42-64-4(a). Indeed, in condemning Mr. Conti’s Property, the EDC performed a function exclusively reserved for the state—the taking of real property. See R.I. Econ. Dev. Corp. v. The Parking Co., 892 A.2d 87, 99 (R.I. 2006) (holding that “[t]he power of eminent domain is a sovereign right”); accord United States v. 7.92

Acres of Land, More or Less, Situated in Towns of Provincetown & Truro, Barnstable Cnty., Commonwealth of Mass., 769 F.2d 4, 7 (1st Cir. 1985) (stating that “[t]he power of eminent domain is an unquestioned attribute of sovereignty”). It was able to do so only because the Legislature specifically granted it authorization “to acquire property . . . by the exercise of the right of eminent domain.” Sec. 42-64-9(b).

In examining the entire statutory framework, the Court here fails to find any intent on the part of the Legislature to distinguish between an “agency of the state government” and “a governmental agency.” See S. Cnty. Post & Beam, 2015 WL 3534116, at *8 (“[S]tatutes relating to the same subject matter should be considered together so that they will harmonize with each other and be consistent’ with their general objective scope.” (quoting Such v. State, 950 A.2d 1150, 1156 (R.I. 2008))); see also id. (“When the statutory language is clear and unambiguous, [courts] give the words their plain and ordinary meaning.”). Indeed, it would be nonsensical for the Legislature to create a statute specifically with regard to the interest rate on condemnation judgments and exclude the EDC from paying such a rate without making this divergence explicit. What an “absurd result” would ensue if one government agency paid one rate while another paid a higher rate for the same underlying action. McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 247 (R.I. 2012) (“When an interpretation of a statutory definition leads to an outcome that is contrary to the policy that underlies the act and achieves an absurd result, this Court simply declines to engage in mere semantics.”). Indeed, the creation of such a scheme would undermine the efficacy of the EDC relative to other state agencies performing the exact same function.

The statutory scheme for a condemnation action, requiring review by the EDC before any proposed acquisition, does not create any conflict in this Court’s interpretation of the statutory

scheme—it is axiomatic that the EDC will engage in reasonable study before any condemnation action, including its own. Even the fact that § 37-6-23(a) provides that “an execution . . . shall be forthwith paid by the general treasurer out of any funds appropriated and available therefor” is of no moment. The EDC is appropriated funds by the General Assembly every year. Sec. 42-64-8.1. Although the EDC does not compensate a landowner with funds directly from the state treasury, it compensates a landowner with funds appropriated to it by the general treasurer. See Such, 950 A.2d at 1156 (directing courts to construe “apparently inconsistent statutory provisions in such a manner so as to avoid the inconsistency” (quoting Kells v. Town of Lincoln, 874 A.2d 204, 212 (R.I. 2005))). As such, although the EDC has its own set of funds with which to acquire property—separate and apart from the general treasury—in the end, the result is substantially the same.

Ultimately, the Court must look to the intent of the Legislature in passing a statute. Here, the intent is resoundingly clear: the rate set forth in § 37-6-23 applies in all condemnation actions, including those conducted by the EDC. Indeed, our Supreme Court has held that “the pre- and post-judgment interest rate on any [] condemnation award . . . [is] the variable treasury-bill rate instead of the [] 12 percent per annum rate.” Ankner v. Napolitano, 764 A.2d 712, 714 (R.I. 2001); accord Isserlis v. Dir. of Pub. Works, 111 R.I. 164, 168, 300 A.2d 273, 275 (1973) (holding that § 9-21-10 does not apply to condemnation proceedings). Accordingly, the variable treasury-bill rate shall be used to calculate the interest on the condemnation judgment here.

III

Conclusion

For the reasons set forth herein, the EDC shall pay Mr. Conti interest on the judgment provided in an amount calculated in accordance with § 37-6-23. Counsel shall submit the appropriate order for judgment.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Conti v. Rhode Island Economic Development Corporation**

CASE NO: **PM 2002-3964**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **August 7, 2015**

JUSTICE/MAGISTRATE: **McGuirl, J.**

ATTORNEYS:

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