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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3188-13T3

COUNTY OF MORRIS,

Plaintiff-Respondent,

v.

RANDOLPH TOWN CENTER
ASSOCIATES, L.P., a New
Jersey Limited Partnership,

Defendant-Appellant,

and

SWEET FISH HOLDINGS, LLC,
FUNB CUSTODIAN FOR FUNDCO
INC., FUNB CUST/TTEE; US
BANK-CUST/SASS; RANDOLPH
TOWNSHIP, a Municipal
Corporation of New Jersey,

Defendants.

Argued May 27, 2015 – Decided June 11, 2015

Before Judges Yannotti and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-3087-13.

Gregory J. Cannon argued the cause for appellant (Berger & Bornstein, LLC, attorneys; Mr. Cannon, on the briefs).

Eric B. McCullough argued the cause for respondent (Waters, McPherson, McNeill, P.C., attorneys; Blake S. Davis, of counsel

and on the brief; Mr. McCullough, on the brief).

PER CURIAM

In this condemnation action, defendant property owner Randolph Town Center Associates, L.P. ("Randolph"), appeals from the February 12, 2014 Law Division order granting final judgment in favor of plaintiff County of Morris (the "County") and appointing commissioners. For the reasons that follow, we affirm.

I.

The property at issue is a 12.86 acre parcel at the corner of Sussex Turnpike and Brookside Road in the Township of Randolph. This property is undeveloped and zoned for residential use. It is downslope from the bordering roads, and prior to this action, had no curb or storm-water drainage structures.

By letter dated October 16, 2012, the County informed Randolph that it planned to take an easement on a strip of land along Brookside Road for road widening and drainage. The strip varied between 7 and 13.5 feet wide, for a total of 2164 square feet. On Randolph's request, plaintiff forwarded its construction plans to defendant's engineer on October 26, 2012.

Randolph declined to attend the County's appraisal inspection of the property on November 9, 2012. The appraiser

treated the easement as equivalent to a fee interest, and concluded that it had a fair market value of $9750. He also concluded that the taking would not have a negative effect on the remainder of the property. A second appraiser reviewed the report and concurred in its findings. The County also obtained a title report for the property and discovered a mortgage and three tax-sale-certificate liens.

By letter dated June 27, 2013, the County offered Randolph $9750 for the easement, relying on its appraisal and appraisal review. In response, Randolph requested a second copy of the construction plans. On August 16, 2013, the County complied with Randolph's request and reiterated its offer.

Randolph failed to respond to the August 16, 2013 letter, or to the County's phone calls. On September 11, 2013, the County faxed a letter to Randolph offering to meet at Randolph's convenience, and stating the County's intent to resolve the matter by the end of the month. Then, on September 20, 2013, the County mailed a letter stating that, in light of Randolph's lack of response, the County satisfied its duty to conduct good faith negotiations, and would resort to legal action. Nevertheless, the County highlighted its continuing willingness to negotiate and settle out of court.

Randolph finally responded on October 8, 2013, submitting a brief memorandum from its engineer that raised concerns about the impact of the construction on the remainder of the property.[1] According to Randolph, the construction would convert storm-water drainage onto the property from sheet flow to point discharge, focusing the erosion impact at two inlets. Presently, Randolph argues that this will cause wetlands to form on the remainder of the property, decreasing its value.

The parties met on October 23, 2013, and Randolph proposed several modifications to the construction plans, including a request to channel all runoff away from the property through new drains. The County agreed to several of Randolph's other requests, and referred the drainage issue to its engineer. The County also reiterated its time restraint, asserting a deadline of November 13, 2013, and requested Randolph begin resolving the liens on the property.

On November 6, 2013, the County informed defendant that, due to existing wetlands on property, the proposal regarding drainage would violate requirements set by the New Jersey Department of Environmental Protection ("NJDEP"). However, the

[1] The Law Division noted that the memorandum was not on letterhead, and did not reveal its authorship. Nevertheless, the court apparently accepted defendant's representations that an engineer, described by Randolph as "like a civil engineer[,]" authored the document.

County highlighted that the planned and permitted construction would reduce runoff onto the property by approximately fifty percent. The County also reiterated its November 13, 2013 deadline. Randolph failed to respond by that date, and the County filed this action on November 17, 2013.

On November 22, 2013, Randolph proposed a compromise whereby the County would install a partial drain pipe instead of inlets. Then, Randolph would connect the new drain pipe to an existing pipe leading away from the property. Specifically, Randolph "would . . . have the responsibility of tying the two points together, because, contrary to [the County's] letter, [Randolph did] not believe [the property] to be wetlands." The County would grant Randolph the right to tie into the drains, and verify that the existing pipe could handle the increased flow.

On December 9, 2013, the County rejected Randolph's compromise solution, finding that diverting the runoff completely would violate its existing NJDEP permits, and exceed the flow capacity of the existing pipes. On January 2, 2014, the County filed an order to show cause to proceed summarily, followed by a declaration of taking on January 9, 2014. Randolph answered on January 23, 2014, asserting the County failed to engage in good faith negotiations.

Judge Thomas L. Weisenback presided over oral argument on February 10, 2014. Randolph conceded that the County initially engaged in good faith negotiations, but argued that, in light of Randolph's offer to assume responsibility for the proposed permitting and construction, the County could not flatly reject Randolph's compromise solution. Randolph also disputed the County's position that the property contained wetlands.

Judge Weisenback found that the County "did everything that [it was] reasonably required to do[,]" came "to the table in good faith[,]" and engaged in a "fair give and take[.]" Relying on public records submitted by the County, the judge confirmed that the property contained wetlands. However, he rejected Randolph's objections without prejudice, allowing Randolph to argue damage from the point-discharge runoff in any future proceeding concerning the value of the taking. The judge then entered final judgment in favor of the County and appointed commissioners.

This appeal followed. On appeal, Randolph argues that the County's appraisal was deficient, and that the County violated its duty to negotiate in good faith.

II.

We first address the adequacy of the County's appraisal. In a Rule 4:67-1 summary action, we will not disturb the trial

court's fact finding unless "'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 365 (App. Div. 2010) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). However, "interpretation[s] of the law and the legal consequences that flow from established facts are not entitled to any special deference." Id. at 365 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

N.J.S.A. 20:3-6 requires, in pertinent part:

> [A]n offer in writing by the condemnor to the prospective condemnee holding . . . the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated, and such other matters as may be required by the rules.

Rule 4:73-1 further provides that a condemnation complaint

> shall include a statement showing the amount of compensation offered by the condemnor and a reasonable disclosure of the manner in which the amount has been calculated. . . . [R]easonable disclosure by the condemnor shall include . . . a statement of the full fair market value . . . ; and any unusual factors known to the condemnor which may affect value.

The requirements set forth in N.J.S.A. 20:3-6 are jurisdictional, and the failure to comply results in dismissal

of the complaint. State, by Comm'r of Transp. v. Carroll, 123 N.J. 308, 316 (1991); Borough of Merchantville v. Malik & Son, LLC, 429 N.J. Super. 416, 429 (App. Div. 2013), aff'd, 218 N.J. 556 (2014).

"The Legislature . . . intended that [the N.J.S.A. 20:3-6] requirements of a fair offer, reasonable disclosure, and bona-fide negotiations be construed and applied in a manner protective of property owners." Carroll, supra, 123 N.J. at 316. Pre-complaint negotiation disclosures "must permit a reasonable, average property owner to conduct informed and intelligent negotiations[,]" id. at 321, and condemnees must be assured the government "'is treating them with absolute candor and fairness[,]'" id. at 316 (quoting State, by Comm'r of Transp. v. Hancock, 208 N.J. Super. 737, 738 (Law Div.), aff'd o.b., 210 N.J. Super. 568 (App. Div. 1985)).

The condemnor's disclosure obligation extends to complete copies of all appraisals prepared, whether or not the condemnor relied upon the appraisal in crafting its offer. Hancock, supra, 208 N.J. Super. at 742. However, "absent a court order a condemnor need not disclose information unrelated to the manner of calculating the offer even in the condemnation complaint." State, by Comm'r of Transp. v. Town of Morristown, 129 N.J. 279, 288 (1992).

According to Randolph, the County's appraisal was deficient by its failure to investigate or disclose the impact of the modifications to storm runoff on the remainder of the property. However, the County need not investigate all possible issues at that early stage. See Carroll, supra, 123 N.J. at 319-24 (concluding that an appraisal's failure to account for damages due to loss of trees and shrubs was not fatal to a condemnation action); Hous. Auth. of City of New Brunswick v. Suydam Investors, L.L.C., 355 N.J. Super. 530, 542-46 (App. Div. 2002), (concluding that an appraisal's failure to affirmatively investigate the possibility of pre-existing toxic waste was not fatal to a condemnation action), aff'd in part and rev'd in part on other grounds, 177 N.J. 2 (2003).

Imposing an affirmative duty on a condemnor's appraiser to affirmatively investigate all potential issues could have an impact upon the value of the taking would front-load the condemnation process, and enable a condemnee to defeat any condemnation action by simply raising a novel issue not addressed by the appraiser. Moreover, such a holding could incentivize condemnees during negotiation to withhold issues affecting value that are known to them but unknown to the condemnor, impeding fair and efficient settlement.

Clearly, under Rule 4:73-1, the condemnor must disclose any "unusual factors known to the condemnor which may affect value." (emphasis added). Moreover, we do not preclude the possibility that some issues are so routine or obvious that the appraiser has an affirmative duty to investigate, consider, and disclose them.

Here, however, the issue was too inconsequential and obscure to render the County's appraisal materially deficient. The impact of converting the ordinary storm runoff from sheet to point discharge will be mitigated by the accompanying fifty-percent reduction in volume. Moreover, Randolph presented no competent evidence that such a conversion would have a measurable impact on the remainder of the property. Accordingly, we conclude that the County's appraisal satisfied its disclosure obligations under N.J.S.A. 20:3-6 and Rule 4:73-1.

III.

We next turn to the County's duty to negotiate in good faith. "[F]urnishing the condemnee with a copy of the appraisal is merely the minimum threshold to good faith negotiations[.]" County of Morris v. Weiner, 222 N.J. Super. 560, 564 (App. Div.), certif. denied, 111 N.J. 573 (1988). In addition to

requiring a written offer supported by an appraisal, N.J.S.A. 20:3-6 provides:

> [N]o action to condemn shall be instituted unless the condemnor is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee[.] . . . A rejection of said offer or failure to accept the same within the period fixed in written offer, . . . shall be conclusive proof of the inability of the condemnor to acquire the property or possession thereof through negotiations.

The good-faith-negotiation requirement of N.J.S.A. 20:3-6 is intended to "encourage settlements and the voluntary acquisition of property needed for public purposes, allowing both the public entity and land owner to avoid the expense and delay of litigation and a trial, while permitting the land owner to receive just compensation." Malik, supra, 429 N.J. Super. at 429-30 (quoting Atl. City v. Cynwyd Invs., 148 N.J. 55, 71 (1997)).

Whether a condemnee's response to an offer constitutes a rejection or a negotiation tactic inviting further discussion is a context-sensitive inquiry. Compare Malik, supra, 429 N.J. Super. at 420-32, with Weiner, supra, 222 N.J. Super. at 563-66. Individual correspondence must be considered in the context of the entire negotiation. The condemnee's tone and responsiveness are relevant, and the condemnor's "duty to negotiate in good faith can be tempered by a property owner's failure to

cooperate." Carroll, supra, 123 N.J. at 323. Explicit language, such as a "formal notification of . . . rejection[,]" Malik, supra, 429 N.J. Super. at 423, or a claim that the condemnor "has not satisfied any bona fide negotiation criteria[,]" Weiner, supra, 222 N.J. Super. at 564, is persuasive, but not determinative.

Here, the County responded promptly to Randolph's disclosure requests, and aggressively pursued settlement. Meanwhile, Randolph was generally unresponsive to the County's advances, waiting 103 days to meaningfully respond to the County's initial offer. Randolph's counteroffer, when it did come, did not address valuation, which is the material issue in a condemnation, but instead raised concerns about the underlying construction, which could have been raised at the planning stage of the project. Additionally, throughout the process, Randolph ignored the County's deadlines, and never made any attempt to address the mortgage and tax liens on the property, a prerequisite of any final settlement, despite continual prompting from the County.

The County made an initial offer, and Randolph eventually counteroffered with various modifications. See Berberian v. Lynn, 355 N.J. Super. 210, 217 (App. Div. 2002) ("A counteroffer operates as a rejection because it implies that the offeree will

not consent to the terms of the original offer and will only enter into the transaction on the terms stated in the counteroffer."), aff'd in part and modified in part, 179 N.J. 290 (2004). The County adopted some of Randolph's proposals, and, after review by its engineer, rejected the remainder. Randolph again counteroffered, and the County, relying upon clear legal and physical impediments to Randolph's proposal, rejected the counteroffer.[2] Then, after these lengthy negotiations, and while no offer was pending, the County proceeded to file this action.

Given the diligence with which the County pursued settlement, the often-delayed responses of Randolph, the well-articulated reasons for rejecting Randolph's counteroffers, and the fact that no offers were pending when the County resorted to legal action, we conclude that the County satisfied its N.J.S.A. 20:3-6 duty to negotiate. Accordingly, we affirm the Law Division's February 12, 2014 final judgment.

Affirmed.

[2] We see no merit in Randolph's argument that the County could have proceeded by delegating to Randolph the responsibility for permitting and constructing the proposed modifications. Even if Randolph had clearly articulated this compromise, the record lacks any evidence that such piecemeal construction would have been feasible.