

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of

THE VILLAGE OF HAVERSTRAW TO ACQUIRE
TITLE TO CERTAIN REAL PROPERTY LOCATED
IN THE VILLAGE OF HAVERSTRAW, ROCKLAND
COUNTY, STATE OF NEW YORK, AND
DESIGNATED ON THE TAX MAPS OF THE
VILLAGE OF HAVERSTRAW AS SECTION 27.09,
BLOCK 1, LOT 3

DECISION/ORDER

Index No:
8853/07

Motion Date:
6/5/09

-----X
THE RAY RIVER CO. and HAVERSTRAW
RIVERFRONT INC.

Claimant,

-against -

THE VILLAGE OF HAVERSTRAW,

Condemnor.

-----X
LaCAVA, J.

The following papers numbered 1 to 6 were considered in connection with these motions by claimant Ray River Co. (claimant) to renew and reargue the Court's Decision and Order dated December 14, 2007 (and entered March 27, 2008), and to compel condemnor to make an advance payment to claimant:

| <u>PAPERS</u> | <u>NUMBERED</u> |
|---|-----------------|
| NOTICE OF MOTION/AFFIRMATION/EXHIBITS | 1 |
| NOTICE OF MOTION/AFFIRMATION/EXHIBITS | 2 |
| COMBINED AFFIRMATION IN OPPOSITION/EXHIBITS | 3 |
| REPLY AFFIRMATION | 4 |
| LETTER FROM MICHAEL RIKON, ESQ./EXHIBIT | 5 |
| LETTER FROM LIANE V. WATKINS, ESQ./EXHIBIT | 6 |

In this Eminent Domain action involving, *inter alia*, property

owned by claimant, (the subject property) Condemnor Village of Haverstraw (Village) previously moved for an ORDER granting it authority to acquire the subject property pursuant to Eminent Domain Procedure Law Articles 2 and 4. In a Decision and Order dated December 14, 2007, this Court granted the relief as unopposed. Claimant now seeks to renew and reargue, and further to compel condemnor to make an advance payment to claimant.

Subsequently, claimant also pursued an appeal of the December 14, 2007 Decision and Order; in a Decision and Order dated May 26, 2009, the Appellate Division, Second Department, affirmed this Court's December 14, 2007 Decision and Order. Consequently, so much of claimant's instant motion as seeks renewal and/or reargument of this Court's December 14, 2007 Decision and Order, is denied as moot.

Regarding the matter of the advance payment, during pre-litigation proceedings before the Village, on August 11, 2006, counsel for the Village sent a letter to claimant stating the Village's intentions to acquire the Subject Property, and made a good-faith offer of \$1,190,000.00 for the acquisition. Counsel advised petitioners that they had 90 days to accept or reject this offer. On March 7, 2007, the Village, in light of petitioners' failure to accept the tendered offer, informed claimant by mail that they were seeking to enter onto the Subject Property to perform environmental testing in preparation for the property's condemnation. In response, two days later, Ray River filed an Article 78 proceeding in the nature of a Writ of Prohibition seeking to preclude the Village from taking, or seeking to take, title pursuant to eminent domain. Ray River also wrote a letter to the Village informing them that they were not permitted on the subject property, and that they would be considered trespassers if they entered; the petitioners also padlocked the entrance to the Subject Property.

However, notwithstanding these warnings, the Village entered upon the Subject Property to perform testing on March 13, 14, and 15, 2007. Petitioners then, on March 20, 2007, sought an Order to Show Cause preliminarily and permanently enjoining future entry by the Village upon the subject premises. Pursuant to EDPL §401 and facts offered during oral argument on the motion, the Court denied the requested interim relief, but left open Ray River's request for a permanent injunction. Subsequently, this Court denied the injunction as well, and permitted the condemnation to proceed; as set forth above, claimants then appealed this grant of the Order of

Acquisition to the Second Department (which affirmed the grant of the Acquisition Order by this Court) while also seeking to renew and reargue the Order of Acquisition itself before this Court (again, as set forth above, denied by this Court herein as moot based on the May 26, 2009 Decision and Order of the Appellate Division), and while also now seeking to compel condemnors to make an advance payment.

As condemnor points out in opposition to the motion to compel payment, the taking itself was under appeal until recently; had the appeal been successful and the taking reversed, for example, the advance payment motion would have been mooted as well. Condemnor also argues that the statute (EDPL § 303) does not specify a time during or before which an advance payment **must** be made; rather, such offer must be made prior to the acquisition of the property by the condemnor only "whenever practicable." (See, *Matter of Village of Port Chester*, Supreme Court, Westchester County, Rosato, J., July 11, 2001, affirmed 294 A.D.2d 510 [2nd Dept. 2002].) However, at the present time, the matter appears to no longer be on appeal, and the claimant's motion to renew and/or reargue to the Appellate Division was denied. Consequently, so long as other proceedings involving the taking are no longer pending, condemnors will be directed to make an advance payment to claimant.

Based on the foregoing, it is hereby

ORDERED, that the petitioner's motion, for an Order granting renewal and/or reargument of the Court's Decision and Order dated December 14, 2007, is denied as moot; and it is further

ORDERED, that the petitioner's motion, for an Order compelling condemnor to make an advance payment to claimant, is granted.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
November 16, 2009

HON. JOHN R. LA CAVA, J.S.C.

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