

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 Application of

COUNTY OF ROCKLAND, NEW YORK,

Petitioner,

-against -

DONALD A. LUCCA, JR., and
KRISTY FAICCO-LUCCA,

Respondent-Owners,

For an Order Pursuant to Article 4 of the Eminent Domain Procedure Law to Acquire Real Property and Obtain Authorization to File Acquisition Maps.

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LaCAVA, J.

DECISION/ORDER

Index Nos:
8669/09

Motion Date:
04/05/10

The following papers numbered 1 to 4 were considered in connection with this motion by condemnor for an ORDER granting them leave to reargue the Court's Decision and Order entered on February 2, 2010, which granted condemnor authority to acquire certain property by eminent domain pursuant to Eminent Domain Procedure Law Articles 2 and 4 from Donald A. Lucca and Kristy Faicco-Lucca (the Luccas):

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION/EXHIBITS	1
AFFIRMATION IN OPPOSITION/EXHIBITS	2
REPLY AFFIRMATION/EXHIBITS	3
4/6/10 LETTER/EXHIBITS FROM HITE & BEAUMONT, PC	4

Petitioner/condemnor County of Rockland (County) previously brought the instant petition to acquire by eminent domain certain

real property known as and located at 99 New Hempstead Road, Clarkstown, Rockland County, New York, otherwise denominated on the Tax Map of the County of Rockland as Section 43.14, Block 2, Lot 66 (43.14-2-66). Said property was owned, as set forth below, by respondents the Luccas.

The County alleged that said acquisition was necessitated by the need to clear, reconstruct, redevelop, and repair road access in the area surrounding and including the subject property.

Petitioner duly published a Notice of Hearing, and mailed same to respondents. Hearings were held on the issue of the proposed acquisition at the office of the County legislature, County of Rockland, and testimony related thereto was taken. Subsequently, the County adopted a Determination and Findings supporting the acquisition, and published same on April 26 and 27, 2007. In particular, condemnor noted that a search of the land records for the subject property had disclosed the existence of two apparently unsatisfied mortgages thereon, and consequently sought the deposit of any advance payment funds to the County Clerk pending resolution of the competing interests in the subject premises.

Respondents opposed the proposed taking on various procedural and substantive grounds; however, pursuant to statute, this Court has no jurisdiction to hear matters relating to the Determination and Findings supporting a taking, such jurisdiction being lodged **solely** in the Appellate Division within which the property lies (here, the Second Department); see EDPL §207 [A] through [C]). Respondents also opposed the proposed deposit to the County Clerk, although they failed to demonstrate that the alleged mortgages were not currently unsatisfied.

In a Decision and Order dated February 12, 2010; the Court stated:

ORDERED, that the petitioner's petition to acquire by eminent domain certain real property known as and located at 99 New Hempstead Road, Clarkstown, Rockland County, New York, otherwise denominated on the Tax Map of the County of Rockland as Section 43.14, Block 2, Lot 66 (43.14-2-66) is granted.

Settle Order.

Subsequently, the Court entered an order proposed by Condemnor authorizing the acquisition and, *inter alia*, permitting the deposit of the funds to the County Clerk pending the resolution of the allegedly outstanding mortgages. Respondents now move to reargue, asserting that the enactment of the EDPL repealed Chapter 1161 of the Laws of 1971, upon which condemnor relied in seeking deposit of the funds; that the apparent existence of the currently unsatisfied mortgages does not justify such deposit; and in any event, that the alternate grounds offered by condemnor for the deposit, §301 of the Uniform Relocation Assistance and Real Property Acquisitions Act (42 USC §§4601 et seq). is inapplicable.

Condemnee argues that the enactment of the EDPL (in Laws of 1977, ch. 839) was intended to be the sole mechanism for eminent domain actions in the state, and that the accompanying repealer statute (Laws of 1977, ch. 840) was intended to supplant all previous statutes relating to condemnation procedures. Condemnee is arguably correct, based on the language of EDPL §101 that the law is to provide "...the exclusive procedure..." for such acquisitions, or of §705 that the EDPL "...shall be controlling...". In fact, while chapter 840 specifies many other statutes that were to be repealed by chapter 839, notably Chapter 1161 of the Laws of 1971 (relied upon by condemnor as authority for the deposit of advance funds with the county clerk) was not specifically named among those statutes to be repealed.

However, even if the latter statute was implicitly repealed by the language of EDPL §§101 and 705, EDPL §304 (D) clearly provides that a deposit of advance payment funds shall be made to the clerk of the court where "...a conflict arises over the percentage of the condemnation award which should be paid to each of several owners of interests in the condemned property...." Here, the apparently uncontested existence of at least two unsatisfied mortgages, as well as the Lucca's own interest, means perforce that a conflict has arisen with respect to the percentage which should be paid to the several holders of interests in the subject property. Consequently, any advance payment **must** be made to the County Clerk pending resolution of the competing interests.

In any event, as condemnor properly points out, the instant acquisition, as financed by federal highway appropriations, is

governed largely by the provisions of 42 USC §4601 *et seq.*; §4651 (4) specifically provides for the deposit of advance funds "...with the court...", which is precisely what the Court directed in the February 2, 2010 Decision and Order.

Based upon the foregoing, it is hereby

ORDERED, that the motion for reargument of the Court's February 2, 2010 Decision and Order, by condemnees Donald A. Lucca and Kristy Faicco-Lucca, is hereby denied.

Dated: White Plains, New York
June 28, 2010

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

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