

Matter of Town of Southold

2007 NY Slip Op 34419(U)

February 2, 2007

Supreme Court, Suffolk County

Docket Number: 23054/06

Judge: John C. Bivona

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SHORT FORM ORDER

INDEX NO.: 23054/06
Date of Decision: 02/02/07

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 2 SUFFOLK COUNTY

Present:

HON. JOHN C. BIVONA
Justice

PETITION DATE: 08/22/06
SUBMIT DATE: 09/20/06
MOTION: 001 - MG

-----X
In the Matter of the Petition of the
TOWN OF SOUTHOLD to acquire certain:
real properties necessary for the
Expansion of the Town of Southold
Town Hall

PLTF'S/PET'S ATTY:
**GOLDSTEIN, GOLDSTEIN,
RIKON & GOTTLIEB, P.B.**
80 Pine Street
New York, N.Y. 10005

(SCTM 1000-61-1-p/o 3, George C.
AND Margaret A. Stankevich.

DEFT'S/RESP'S ATTY:
GEORGE C. STANKEVICH, ESQ.
74 Montauk Highway
Suite 22
East Hampton, N.Y. 11937
-----X

The Court in its deliberations has considered:

1. Notice of Petition, Verified Petition and supporting papers, including Memorandum of Law and Proposed Order;
2. Answer and Affirmative Defenses and Respondent's Brief;
3. Verified Reply to Answer.

Petitioner seeks to acquire title to land and improvements appearing on SCTM 1000-61-1-p/o 3 and for permission to file an Acquisition Map. Respondent cross-moves for dismissal of the Petition and a stay pending determination by the Court of Appeals of its Motion for Leave to Appeal.

The public use for the subject property is the expansion of the Town of Southold

Re: Town of Southold
Index No. 06/23054

Page 2

Town Hall. The Petitioner asserts full compliance with **EDPL Article 2**.

The request for a stay pending determination by the Court of Appeals of its Motion for Leave to Appeal is denied as moot. The Court received a copy of a decision of the Court of Appeals dated November 21, 2006 which denied Petitioner's Motion for Leave to Appeal.

By letter dated November 29, 2006 Petitioner, George Cochran Stankevich, Esq., a self represented litigant, served a Demand for a Kelo Constitutional Hearing. No authority was cited, establishing a basis for the request. In a decision of the Appellate Division, Second Department, 2006 NY Slip Op 03908, dated May 16, 2006 the Court referring to the proceeding commenced by the Stankevich Petitioners pursuant to **EDPL §207** found that the condemnor had broad discretion to decide what land is necessary to fulfill its purposes and further that its determination was rational and would not be disturbed (cit.om.) That Court also found that the allegations attacking the good faith and purposes of the condemnor to be unsupported, holding that they "fall far short of a 'clear showing'" (cit.om.). According to the Appellate Court, the record revealed that the Town-condemnor had an adequate basis for its determination and that the Stankevich Petitioners had not shown that the Town's determination was without foundation, concluding that the Town-condemnor had complied with **ECL Article 8** and the applicable regulations (**6 N.Y.C.R.R. 617.1, et seq.**)

In their supporting Brief dated September 19, 2006 Respondents, George C. and

Re: Town of Southold
Index No. 06/23054

Page 3

Margaret A. Stankevich, as reputed owners of property appearing on the Suffolk County Tax Map as SCTM district 1000, section 61, block 01, p/o lot 03, presently claim a jurisdictional defect in that the Petition is verified by special counsel, and therefore a nullity pursuant to **EDPL §402 (B) (3)** because “the condemnor shall present to the Court a Petition Verified by an **authorized officer**... (emphasis added)”. The Court notes that said argument was never asserted in Respondents’ pleadings as an affirmative defense.

By resolution dated May 10, 2005, among other determinations and findings, the Town resolved “that the Supervisor is authorized and directed to execute any documents...”. No reference was made to pleadings. **CPLR §402** states that “There shall be a Petition, which shall comply with the requirements of a complaint in an action...”. **CPLR §3020 (d) (2)** permits that where the party is a governmental subdivision a verification may be made by any person acquainted with the facts on behalf of any of the parties named therein, including the state, a governmental subdivision, a board, commission, agency, or public officer.

By Town Board Resolution 265 dated April 26, 2005 the Town Board did retain special counsel in the subject Eminent Domain proceeding. (**CPLR §3020 [3]**). In their Brief in support of Cross-Motion to dismiss **the EDPL §402 (B)** Petition, reputed owners make much of an allegation of jurisdictional defect, making reference to the determinations and findings dated May 10, 2005, addressing the authority of the supervisor to execute documents; however, no analysis is offered with respect to the

Re: Town of Southold
Index No. 06/23054

Page 4

status of the signing authority by special counsel or the implications of **CPLR §3020** with respect to the authority of an attorney to verify pleadings for a municipality or foreign attorney maintaining offices beyond the county in which the party litigant is located

While the condemning authority cites **In Re St. Lawrence and Adirondack Railroad Company 133 NY 70 (1872)**, the reputed owners argue that it is of little authority with respect to the issue presented. Their analysis is unacceptable since that Court specifically addressed the authority of an attorney to verify pleadings for a corporate entity, holding that the attorney was deemed an officer of the corporation. Here, it cannot be disputed that the Town Attorney is an officer of the municipal corporation. By parallel analysis special counsel with respect to his duties in representing the municipal corporation in litigation would have likewise authority. Although the reputed owners argue that **EDPL** is *sui generis* and may not be overruled by a more general law, it begs the question since here the Town Board authorized the Supervisor to execute documents. Special counsel acts as an officer of the municipal corporation. Thus, he has the authority to execute pleadings in appropriate litigation.

The arguments raised with respect to advance payment and the alleged change in the political environment of the condemning authority are superfluous and irrelevant to the primary question. Since the Appellate Courts have addressed all relevant and pertinent issues material to the exercise of the power of Eminent Domain by the

Re: Town of Southhold
Index No. 06/23054

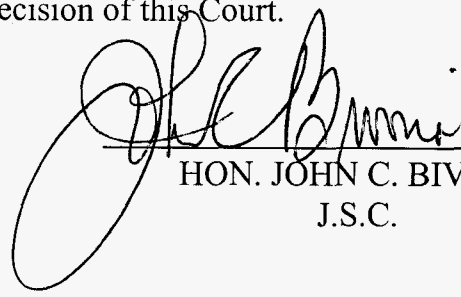
condemnor this Court will no longer delay the judicial phase of the proceeding. The cross-motion of the reputed owners is denied in all respects and the Petition is granted.

The Court finds and concludes that the condemnor is in full compliance with the requirements of the Eminent Domain Procedure Law; the condemnor is authorized to file an appropriate Order and taking map with the Clerk of the Court and the County Clerk of Suffolk County and the Clerk shall index the Vesting Order against the property in question. The property owners shall have (upon proper service with Notice of the Vesting Order herein with proper publication) a period of three (3) years in which to file a Notice of Appearance or Notice of Claim with service of the copy of said document as filed with the Clerk of the Court under a new index number upon the Town Attorney for the Town of Southhold together with a copy of the taking map attached thereto and in compliance with all of the pertinent requirements as established by statute.

Simultaneously with this Decision the Court executes the Proposed Order submitted by Petitioner.

The foregoing constitutes the Decision of this Court.

DATED: February 2, 2007



HON. JOHN C. BIVONA
J.S.C.

 X FINAL DISPOSITION NON-FINAL DISPOSITION