

**Matter of City of New York**

2008 NY Slip Op 33044(U)

November 12, 2008

Supreme Court, New York County

Docket Number: 404743/07

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

JANE S. SOLOMON

PRESENT: \_\_\_\_\_

PART 55

Justice

Index Number : 404743/2007

CITY OF NEW YORK

VS.

NO. 7 SUBWAY EXTENSION

SEQUENCE NUMBER : # 005

COMPEL

INDEX NO. 404743-07

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1-3

4-5

6-7

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

*is decided pursuant to attached Decision*

*Settle order*

... IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 11/12/08

*J.S.*  
JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X

In the matter of the Application of  
THE CITY OF NEW YORK,

INDEX No. 404743/07

Petitioner,

To Acquire by Exercise of its Powers  
of Eminent Domain, Fee Interest in Certain  
Real Property Known as Tax Block 706, Lots  
15,17,48, 50 and 52 and Tax block 707,  
Lots 13, 16 (and adjacent strip),  
51,54,56; and a Fee Interest and an Estate  
for a Term of years in Tax Block 706, Lot 10;  
all located in the Borough of Manhattan,  
Required as Part of the

DECISION

No.7 SUBWAY EXTENSION-HUDSON YARDS  
RE-ZONING AND DEVELOPMENT PROGRAM,  
PHASE 1, STAGE 4.

-----X

SOLOMON, J.:

Condemnee-claimant General Camera, LLC, the former owner  
of property located at 530 West 38<sup>th</sup> Street New York, New York,  
moves for an order directing Condemnor City of New York to pay  
interest "in the correct amount" on an advance payment made under  
New York's Eminent Domain Procedure Law ("EDPL") for claimant's  
interest in the real property captioned above.

By letter dated April 17, 2007, the City offered \$10  
million to claimant, "subject to" the submission of the proper  
documents, and "contingent upon" the acquisition of title. The  
letter also states "[t]his offer is the full amount of the City's  
highest approved appraisal value . . . ." By letter dated May 9,  
2007, while rejecting the offer as payment in full, Claimant

accepted it as an advance payment. The City acquired title on August 1, 2007.

Then, by letter dated October 3, 2007, said to have been sent by certified mail, return receipt requested, the City restated the \$10 million offer. In this letter, the City stated that, if claimant proved ownership, cleared liens, provided payment instructions, and accepted the offer as payment in full or as an advance, the funds would be available on November 9, 2007. A copy of the April 17 letter, which the author of the transmittal letter described as "rejected," was attached. This time, in distinction to the earlier letter, the body of the letter and the substantive attachments set forth the data which the City required prior to payment. Claimant accepted the offer by a letter dated October 15 and, patently, the City's requirements were met because the City's representation that payment was made on December 11, 2007 is uncontested. In other words, 69 days from the date of the letter, the City paid claimant the \$10 million together with interest for 90 days, namely from the vesting date, August 1, to November 9, 2007.

The first statutory provision at issue is EDPL section 304( C ) which, as relevant, provides:

In the event a condemnee shall reject the offer or the offer shall be deemed rejected . . . or a condemnee unreasonably fails to provide the condemnor with all papers reasonably necessary to effect a valid transfer of title as acquired, within 90 days of receipt, the condemnor's obligation to pay interest on the amount of

the offer shall be suspended until such time as the condemnee . . . provides the necessary title papers[.]

To state the obvious, there is no dispute that the papers reasonably necessary to effect a valid transfer of title were delivered by claimant within 90 days of the date it received the October 3 letter, and well after 90 days from the April letter.

In support of its motion for the extra days' interest, Claimant makes two unsupportable arguments in respect of the quoted text. First, it contends in paragraph 10 of the moving affirmation that "[t]he City cannot terminate its obligation to pay interest on the advance payment until ninety (90) days after the condemnee unreasonably fails to provide the condemnor with all papers reasonably necessary to effect a valid transfer of title." This is an inaccurate paraphrase of the text which, on its face, measures the 90 days, quite simply, from receipt of an offer. The second unpersuasive statement is that section 2103 of the CPLR adds 5 days to the 90 days when an offer is mailed. Section 2103 provides that "where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period," while here the period of time is measured from receipt. Unknown, but irrelevant in the instant matter, is the date shown on the returned "green card" for the certified mail delivery. In any

event, neither argument addresses the issue before the court, namely whether the pre-acquisition offer in the letter of April 17, has any application to the running of the 90 days.

The City argues in opposition that the claimant should have known what to submit and that listing the required paperwork in the October letter as was done was a courtesy and not an obligation, so that the short period the City selected in the October 3 letter should be adopted by the court.

Notably, however, the October 3, 2007 letter is presented as an independent offer restating an appraised value that the City described as previously rejected. Perhaps this was inadvertent, or, perhaps it was intentional because the April letter is not in strict compliance with the requirements of an offer set forth in EDPL section 304 (A)(1) which states:

(A)The written offer, or any adjustment thereof made prior to acceptance, shall state that:

(1) the offer constitutes the amount of the condemnor's highest approved appraisal of the just compensation for the property, and that payment will be made together with appropriate interest. (emphasis added.)

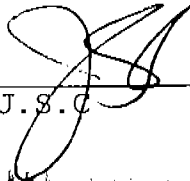
The emphasized text was not included in the offering portion of the April 17 letter.

Under the circumstances, claimant, which received interest on the principal sum of \$10 million for the period from August 1, 2003 through November 9, 2007 is entitled to additional interest on the principal sum of \$10 million for the balance of

the 69 days from the date of the offer through the date of payment, namely for the days between November 9 and December 11, 2007.

Settle order.

Date: *Nov 12, 2008*

  
\_\_\_\_\_  
J.S.C.  
*James S. ...*