

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

379

OP 23-01960

PRESENT: WHALEN, P.J., CURRAN, GREENWOOD, NOWAK, AND KEANE, JJ.

IN THE MATTER OF COUNTY OF ORLEANS,
PETITIONER,

V

MEMORANDUM AND ORDER

GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
DOING BUSINESS AS GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER, GENESEE GATEWAY LOCAL
DEVELOPMENT CORPORATION, STAMP SEWER WORKS, INC.,
G. DEVINCENTIS & SON CONSTRUCTION CO., INC.,
CLARK PATTERSON LEE AND HIGHLANDER CONSTRUCTION,
RESPONDENTS.

LIPPES MATHIAS LLP, BUFFALO (ALEXANDER W. EATON OF COUNSEL), FOR
PETITIONER.

PHILLIPS LYTTLE LLP, BUFFALO (CRAIG A. LESLIE OF COUNSEL), FOR
RESPONDENTS GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, DOING
BUSINESS AS GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER, GENESEE
GATEWAY LOCAL DEVELOPMENT CORPORATION, STAMP SEWER WORKS, INC., AND
G. DEVINCENTIS & SON CONSTRUCTION CO., INC.

Proceeding pursuant to EDPL 207 (initiated in the Appellate
Division of the Supreme Court in the Fourth Judicial Department) to
review a certain condemnation by eminent domain.

It is hereby ORDERED that said petition is unanimously dismissed
without costs.

Memorandum: Petitioner commenced this proceeding pursuant to
EDPL 207 seeking to annul the determination of respondent STAMP Sewer
Works, Inc., to acquire by condemnation two temporary easements for
placement of construction equipment in order to install an underground
sewer force main, i.e., a wastewater pipeline, that begins in Genesee
County and will run over the border into Orleans County. Respondents
Genesee County Industrial Development Agency, doing business as
Genesee County Economic Development Center, Genesee Gateway Local
Development Corporation, STAMP Sewer Works, Inc., and G. DeVincentis &
Son Construction Co., Inc., contend that the petition must be
dismissed as untimely. We agree.

"A proceeding under EDPL 207 must be commenced within 30 days
'after the condemnor's completion of its publication of its
determination and findings' " (*Matter of H.H. Warner, LLC v Rochester*

Genesee Regional Transp. Auth., 87 AD3d 1388, 1389 [4th Dept 2011], *lv denied* 19 NY3d 809 [2012], quoting EDPL 207 [A]). Here, the last date of publication was October 22, 2023, and thus the limitations period expired on November 21, 2023. The verified petition was not filed until November 22, 2023, rendering the filing untimely by one day (see *Matter of Hothhouse v Village of Otisville*, 35 AD3d 740, 740 [2d Dept 2006]).

Entered: June 14, 2024

Ann Dillon Flynn
Clerk of the Court