

M E M O R A N D U M

SUPREME COURT: QUEENS COUNTY
IA PART: 8

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Matter of

NEW YORK CITY SCHOOL
CONSTRUCTION AUTHORITY,
etc.

INDEX NO. 14046/00

BY: HART, J.

DATED: APRIL 4, 2005
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The claimants in this condemnation case, Mohammad A. Malik and 72-24 Grand Realty Corp., have moved for an order, inter alia, directing the petitioner, the New York School Construction Authority ("SCA") to comply with a stipulation of settlement entered into on November 12, 2003 by paying them \$1,900,000. Petitioner SCA has cross-moved for, inter alia, an order permitting it to interplead the claimants and the City of New York.

On July 18, 2000, petitioner SCA condemned Tax Block 2802, Lots 90, 94, 96, and 97 for the purpose of building a new elementary school. Mohammad A. Malik filed a notice of claim with respect to Lots 90, 96, and 97, and 72-24 Grand Realty Corp. filed a notice of claim with respect to Lot 94. On November 12, 2003, the parties reached an in-court settlement which provided for the payment of \$1,900,000 on January 15, 2004 and which was silent about any deductions. The stipulation was placed on the record on that date.

The claimants and the SCA scheduled a closing for January 14, 2004, but the latter refused to close unless deductions were made for alleged liens for water charges imposed by the City of New York. Petitioner SCA now seeks to withhold from the settlement amount outstanding tax liabilities, water charges, and Environmental Control Board fines that allegedly arose during the claimants' period of ownership. The attorneys for SCA assert that at the time of the settlement they did not know if there were any liens, but that they subsequently learned that there were outstanding real estate taxes, water charges and Environmental Control Board fines against the property that arose prior to the condemnation. The petitioner contends that a condemnation is in effect a forced sale and that the claimants are required to convey marketable title free and clear of all encumbrances.

By letter dated January 6, 2004, Elizabeth Longacre, Esq., an attorney representing SCA, informed Jerry I. Lefkowitz, Esq., the attorney representing the claimants, that "[i]f there is any lien, judgment, tax or any other item in the title objection list ('Lien') which can be satisfied by the payment of money, which has not been satisfied by the closing date, the Authority will withhold double the amount of the lien and the balance will be payable to Claimant." By letter dated January 7, 2004, Lefkowitz responded: "It is the intention of my client to pay any taxes, liens, judgments or other items at the Closing ***." The parties

adjourned the closing, allegedly to allow the claimants time to pay the liens. However, by letter dated May 18, 2004, Lefkowitz informed Longacre that his clients wanted SCA to take title subject to certain water liens "by reason of the fact that all of the water bills were billed upon alleged water usage which took place after the 'taking' in the above matter.*** Moreover, my clients and their tenants did not use any of the water and all of the alleged water usage was based upon unsupported estimates." After investigation, Jesse Strauss, Esq., representing SCA, sent a letter dated October 7, 2004 to Lefkowitz asserting, inter alia, that the liens against the subject property had been replaced by property taxes in the amount of \$46,728.44, which were attributable to the period prior to the taking, and that water charges amounting to \$61,317.12 had been incurred prior to the taking. Strauss requested the claimants' agreement to pay these sums as well as \$350 in Environmental Control Board fines. Lefkowitz replied that his client would not settle the dispute.

The motion by claimant Mohammad A. Malik and claimant 72-24 Grand Realty Corp. for an order, inter alia, directing petitioner SCA to comply with a stipulation of settlement entered into on November 12, 2003 by paying them \$1,900,000 is denied. The cross motion by petitioner SCA for, inter alia, an order permitting it to interplead the claimants and the City of New York is granted. EDPL § 505, " Proof of title; conflicting claims," provides in

relevant part: "*** (B) Where a condemnor disputes a condemnee's title or a right to all or a portion of an award or a prospective award by reason of conflicting claims of title, or if there is uncertainty as to how such payment should be apportioned, the court, upon motion of any party, shall interplead anyone claiming or imputed to have such a conflicting claim or interest." (See, Owasco River Ry., Inc. v. State of New York, 181 AD2d 665.) Assistant Corporation Counsel Ivy L. Jacobson, alleging that there were liens against the property before the taking, has submitted an affirmation on behalf of the City of New York in support of petitioner SCA's cross motion for an order of interpleader. There appears to be a genuine dispute between the claimants on the one hand and petitioner SCA and the City of New York on the other regarding whether liens and/or other charges attached to the property before the taking. Since there is uncertainty as to how the condemnation award should be apportioned, interpleader is an appropriate remedy. (See, Owasco River Ry., Inc. v. State of New York, supra.)

_____Settle order.

J.S.C.