

2015 NY Slip Op 51820(U)

SAGRES 9, LLC, Claimant,
v.
THE STATE OF NEW YORK, Respondent.

SP-178.

Court of Claims.

Decided July 27, 2015.

Goldstein, Rikon, Rikon & Houghton, P.C., Michael Rikon, Esq., and Jonathan Houghton, Esq., for Claimant.

Thomas P. DiNapoli, New York State Comptroller, and Eric T. Schneiderman, Attorney General, Michele M. Walls, AAG, for Defendant.

ALAN C. MARIN, J.

This special proceeding arose from the State of New York's appropriation of temporary easements in property located at 43rd Street and 57th Avenue in Maspeth, Queens (Block 2529, Lot 70), which vested on March 12, 2014¹¹

The State Department of Transportation (DOT), as it is required to do by EDPL § 303, appraised the taking and deposited that amount with the State Comptroller in account W140893 of the State's short-term investment pool (STIP), established under State Finance Law § 97-dd (see EDPL § 304[E][4]). Such amount is an offer to the condemnee (for ease of reference, the property owner). The owner can accept such amount as full payment or treat it as an advance payment subject to the value of the taking as ultimately determined.

It may not be clear who the owner is, and multiple entities can of course have ownership interests in the same property (see *54-30 43rd St., LLC v State of New York*, 38 Misc 3d 1224 [A] [Ct Cl 2012], which involved a mortgagee-bank). To that end, the advance payment is deposited in an account, notice is given to all potential interested parties, and any person or entity claiming an interest in the property can file a petition (EDPL § 304[E]; Court of Claims Act §§ 22 and 23).

²¹ That was done in this case, and no party has come forward to challenge Sagres 9 as the proper distributee. ¹¹

There is some dispute here as to the applicability of paragraph 2 of EDPL § 304[E], which was amended in 1987 to expedite acquisitions by the DOT for projects with Federal Highway Administration funding. See 1987 McKinney's Session Laws of New York, pp 2412-13; among other things, expediting projects was expected to lower interest payments.

* * *

Sagres 9 is seeking an order of distribution of the advance payment from account W140893 with interest paid at the nine percent rate set by section 16 of the State Finance Law, rather than the lower rate at which STIP funds accrue.

Sagres 9 contends that, "In sum, the State deposited the advance payment with no notice, no explanation and no basis whatsoever." What this dispute apparently comes down to is petitioner's argument that, "The State does so on the hope that if it can come up with an explanation after-the-fact, the Court will absolve it of the requirement to pay 9% interest." Ill

The Office of the Attorney General, Real Property Bureau, had sent Sagres 9 a letter dated May 5, 2014, advising that the advance payment was deposited in an account subject to disbursement upon application. No date of deposit was referenced in the letter; but respondent's Verified Answer indicated that the advance was deposited on April 23, 2014. M ¹

Sagres 9 maintains that the State inaccurately depicted the fact of federal involvement in order to expedite the process. L61 Without assuming that this case necessarily turns on the applicability of paragraph 2 of EDPL § 304(E), consider, among other submissions, the Federal Highway Administration's decision of March 9, 2009 adopting the State DOT's plan to replace the Kosciuszko Bridge, which the federal agency described as an integral part of the interstate highway system, used by 160,000 vehicles a day.in

Petitioner complained of an open-ended request for documents, but respondent listed the documents it required in the November 5, 2014 letter from Alison H. Crocker, chief of the Real Property Bureau.-' This Court has said in *54-30 43rd Street, LLC, supra*: "EDPL § 304(A)(4) provides that (t)he right of the condemnee to the advance payment shall not be conditioned on the waiver of any other right.' Petitioner has advanced no precedent to demonstrate that the language of the form has or could be used to petitioner's detriment to trump the statute."

The Court is not persuaded by cases cited by petitioner, including: *Blau Rock, LLC v State of New York* [Ct Cl, Scuccimarra, J., Jan. 15, 2015, SP-170]; *The Other Heights, LLC v State of New York*, U ID No. 2014-029-053 [Ct Cl, Mignano, J., Nov. 7, 2014]; *292 Piermont, LLC v State of New York*, UID No. 2014-029-054 [Ct Cl, Mignano, J., Nov. 25, 2014]; *Freiman Coated Fabric Corp. v State of New York*, UID No. 2014-049-045 [Ct Cl, Weinstein, J., Aug. 20, 2014].

In any event, there might be a better way to handle these matters. As pointed out in its October 1, 2014 letter responding to a September 15, 2014 letter from Ms. Crocker, Sagres 9 was subject to three separate acquisitions for Block 2529, Lot 70 — special proceedings 157, 178 and 179 (decided herewith). Ms. Crocker had written to Sagres 9's law firm, as one that handles a number of eminent domain proceedings against the State, offering an informal method to resolve her office's requirement for documentation before advance payment can be made.-'

* * *

In view of the foregoing, IT IS ORDERED that: 1) upon the notice of entry of this Decision and Order, and service thereof on the Office of the New York State Comptroller and the Office of the New York State Attorney General, the New York State Comptroller shall pay to Petitioner the sum deposited as advance payment in eminent domain account W140893, including any interest that has accumulated in that account; and 2) Petitioner's request for attorneys' fees and disbursements is denied.

Llj The State admits the contention in paragraph 49 of Sagres 9's Verified Petition that an offer was made by tendering the Agreement of Advance Payment to Petitioner prior to the March 12, 2014 vesting date (the State's Verified Answer, paragraph 18). The tender, in a letter dated March 4, 2014, is exhibit G to the Verified Petition.

f2l The statutory language on jurisdiction is not seamless. EDPL §304(E)(1) designates the forum for a State taking as the Court of Claims, and Court of Claims Act §9(12) grants the Court of Claims the power to distribute funds deposited under EDPL §304(E). However, §§22.2 and 23 of the Court of Claims Act designate the Supreme Court as the forum. Nonetheless, it is undisputed that the Court of Claims is the proper forum for an appropriation by the State of New York. See for example, *Matter of Lunt & Bell, LLC v State of New York*, 90 AD3d 930 (2d Dept 2011), and EDPL §705, which provides that the EDPL controls with respect to inconsistent provisions in other statutes.

L3l Petitioner's March 24, 2015 Order to Show Cause with its Affidavit of Service.

[4J Paragraphs 13 and 16 of Sagres 9's Verified Petition.

l5l The May 5, 2014 letter to Sagres 9 is exhibit C to its Verified Petition. The representation on the date of deposit is on paragraph 20 of the State's Verified Answer, and see also paragraph 6 of the Affirmation of Michele M. Walls, Assistant Attorney General.

j6l Paragraphs 13 through 50 of petitioner's Attorney's Affirmation in Opposition and Reply.

[7l Exhibit B to the respondent's Verified Answer, and see the Affidavit of Gulrukh Faroodi, real estate specialist for DOT.

fil Exhibit G to the State's Verified Answer. See paragraph 66 of Sagres 9's Verified Petition (dated November 26, 2014, subsequent to that of exhibit G — November 5, 2014), which provides that "The State cannot demand releases for all claims' and papers which the Attorney General deems necessary' — but also refuse to ... identify what claims or papers it is referring to."

19j The October 1, 2014 letter is exhibit E to petitioner's Attorney's Affirmation in Opposition and Reply; the September 15, 2014 letter is exhibit F to the State's Verified Answer.

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