

Appellate Decision Says A Property Owner Can Recover Costs In A Condemnation Action Regardless Of The Success On The Merits; Prelitigation Costs Are Not Reimbursable

West Orange v. 769 Associates LLC, A-5677-05

January 2, 2008

In a decision issued on December 24, 2007, The NJ Appellate Division held that a trial judge improperly trimmed fees and costs recoverable by the owner by finding that the result of the litigation was irrelevant under the fee-shifting provision of the Eminent Domain Act, N.J. S. A. 20:3-26(b). Consequently, the decision means an extra \$145,825 for 769 Associates LLC, which fought unsuccessfully to the New Jersey Supreme Court to stop West Orange from condemning its office building to build a road. The Court held in the 2002 litigation that the condemnation was supported by a legitimate public purpose; thereafter, the Township and 769 Associates entered into a consent agreement and, as a result, the condemnation action was abandoned.

Subsequently, the owner requested fees of \$402,477, which the trial court reduced by 62% to \$154,722. In restoring the legal fees involved in challenging the condemnation, the Appellate Division said that, "Unlike a traditional fee-shifting statute, which requires the applicant to show that he or she was the prevailing party as a precondition of awarding counsel fees, N.J.S.A. 20:3-26(b) only requires that the request be made after the public entity has abandoned the condemnation suit."

The Appellate Division upheld the exclusion of pre-litigation expenses and those arising from a prerogative writ suit that challenged a related Town Planning Board decision since those expenses did not arise from the "four corners" of the condemnation action. The Court also upheld the exclusion of fees arising from attending municipal hearings, costs of reproduction of municipal records, and transcription costs of sessions of the municipal governing body.

Marc Gross, partner in the Roseland office of Greenbaum, Rowe, Smith & Davis LLP argued the case before the Appellate Division; GRSD counsel Christine Marks assisted on the brief.

Mr. Gross is a commercial litigator and has been with firm for 13 years. He currently serves as President of the Essex County Bar Association.

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