

NJ Supreme Court Rules in Favor of Railroad in Condemnation Matter

John J. Reilly

Greenbaum, Rowe, Smith & Davis LLP Client Alert

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In *Norfolk Southern Railway Company v. Intermodal Properties, LLC*, decided on August 6, 2013, the New Jersey Supreme Court rejected the challenge of property owner Intermodal to the taking of its property by the railroad, thereby affirming the authority of Norfolk Southern to acquire by condemnation the private property to expand railroad facilities.

Norfolk Southern owns and operates the Croxton Yard intermodal freight facility in Secaucus, where freight containers are transferred between rail and trucks. Recognizing a need to expand its facilities, Norfolk Southern commenced condemnation proceedings by petition before the New Jersey Department of Transportation to acquire adjacent property owned by Intermodal. The Intermodal property was improved with an 80,000 S.F. warehouse leased to a freight-forwarding business.

There was no issue that the taking by Norfolk Southern was for the public purpose of a railroad, however Intermodal challenged the taking based on two statutory requirements applicable to takings by railroads. One provision requires that the taking be “not incompatible with the public interest,” and the other permits a taking by a railroad only “as exigencies of business may demand.”

Attempting to rely on the “prior public use doctrine,” Intermodal argued that it proposed to use its property as a parking facility to serve the nearby Secaucus Junction passenger rail station and that its proposed passenger commuter parking use was more in the public interest than Norfolk Southern’s proposed railroad use (in fact, during the pendency of the condemnation proceedings, Intermodal had obtained rezoning of its property to allow such use). Intermodal also argued that Norfolk Southern’s proposed use did not satisfy the “exigencies of business” requirement for a taking by a railroad, a phrase construed by Intermodal as indicative of an emergent situation.

The Administrative Law Judge and the Appellate Division rejected Intermodal’s arguments. On certification, the Supreme Court affirmed, concluding that evidence of Intermodal’s proposed alternative use was irrelevant and properly excluded and that the prior public use doctrine was inapplicable and unavailable to Intermodal. The Court explained that the doctrine applies as a defense to a taking when the two litigants each have the authority to condemn, and when the proposed public use will destroy an existing public use or prevent a proposed public use, unless the Legislature has expressly given authority to do so or such authority is necessarily implied.

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Intermodal could not avail itself of the doctrine because it does not have the power of eminent domain and because its use was neither a prior use nor a public use. The Court instead described Intermodal's proposed use as "a speculative, future plan for a profit-making venture." The Court also clarified that when addressing the statutory provision that the taking be "not incompatible with the public interest," the focus is to be on the proposed use by the condemnor railroad and not on whether some proposed alternative is more in the public interest.

The Court next construed the meaning of "exigencies of business." Even though the Administrative Law Judge and the Appellate Division affirmed the taking by relying on a modern day definition of "exigencies," the Supreme Court disagreed with that approach in interpreting the statutory provision. Instead, because the phrase is a term of art and was used in a statute that is over 100 years old, the Court reviewed other railroad statutes and judicial decisions of that era which addressed the phrase in order to glean the meaning the Legislature intended at the time. After undertaking such review, the Court concluded that the statutory provision "as exigencies of business may require" was a term of art used to generally describe the needs of business or the ordinary course of business. It did not mean, as Intermodal had argued, that the railroad can only take property when there was an emergent, urgent, immediate, or pressing need. The Court also noted that its interpretation was consistent with long term planning critical to rail transport.