

New Jersey Supreme Court Issues Ruling In *Borough of Merchantville v. Malik & Sons, LLC*

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The New Jersey Supreme Court has affirmed that a condemnor is only obligated to conduct pre-complaint bona fide negotiations with the holder of the property or interest to be taken, and not with the holder of a final judgment in foreclosure. The Court also concluded that the foreclosure judgment holder lacks standing to challenge whether the negotiation process between the condemnor and the record owner was conducted in good faith.

In *Borough of Merchantville v. Malik & Sons, LLC*, decided on August 7, 2014, a final judgment in foreclosure on the property had been entered on February 28, 2011. By letter dated November 11, 2011, the Borough made an offer to the record owner in the amount of \$270,000. The record owner rejected the offer as it was less than the amount owed to the lenders and requested an amount which would satisfy all the liens on the property. At the same time, the foreclosure judgment holder advised the Borough that the sheriff's sale was set for December 7, 2011 and that the Borough's offer was far less than the price of \$1,250,000 offered in June 2011 by the Borough's subsequently designated redeveloper. The municipality filed its condemnation complaint on December 5, 2011.

The foreclosure judgment holder then sought to have the condemnation action dismissed by reason of the Borough's failure to negotiate with it as the real party in interest. The trial court rejected the challenge to the taking, and the Appellate Division affirmed. The Supreme Court granted certification and has affirmed concluding that, pursuant to N.J.S.A. 20:3-6, a condemnor is only obligated to conduct bona fide negotiations with the title holder of the property or interest to be taken.

In its opinion, the Court reasoned that the plain language of N.J.S.A. 20:3-6 requires the condemnor to conduct pre-complaint negotiations only with the owner of the interest being condemned, *i.e.*, the record owner when the fee is being condemned. The Court also explained that an owner-mortgagor has the right of redemption to regain complete ownership of the property even beyond the sheriff's sale. The Court recognized that a condemnor may have an obligation to continue negotiations when the owner provides concrete and credible evidence of value that the offer is too low; however, the Court concluded that the record owner's response that the offer was less than the amount owed to the lenders did not constitute such evidence. The Court also acknowledged that the foreclosure judgment holder would be able to participate in the proceedings to determine the amount of just compensation.

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The Court's decision provides a bright line test that the condemnor is obligated to conduct pre-complaint bona fide negotiations only with the owner of record when the fee is to be acquired or with the holder of the interest to be acquired, when less than the fee is being taken, and that a challenge to a taking that the condemnor did not conduct bona fide negotiations can only be made by the record owner.

The Author of this Alert, **John J. Reilly**, is Chair of the firm's Condemnation & Eminent Domain Practice Group.