

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Condemnation By Phoenixville :
Area School District, Chester County, :
Penna., of Tax Parcels: 27-5D-9, :
27-5D-10 & 27-5D-10.1, Owned by :
Meadowbrook Golf Club of :
Phoenixville, Inc. :
: No. 1659 C.D. 2014
Appeal of: CY Group, Inc. : Argued: May 8, 2015

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: May 28, 2015

CY Group, Inc. (CY Group) appeals the orders of the Chester County Court of Common Pleas (trial court) granting the Phoenixville Area School District's (Condemnor) petition for a writ of possession¹ and denying CY Group's

¹ Section 307(a)(1) of the Eminent Domain Code provides, in relevant part:

(1) (i) The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of or a written offer to pay to the condemnee the amount of just compensation as estimated by the condemnor.

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motion to consolidate this matter with an action brought to declare the action authorizing the taking void because it was enacted in violation of the Sunshine Act.² We affirm.

In November 2013, after an agreement regarding a sale of the property was reached, Condemnor filed a declaration of taking condemning over 50 acres of land in Schuylkill Township, Chester County, for public school purposes near its administrative offices, high school, middle school, athletic fields and other school facilities.³ Meadowbrook Golf Club of Phoenixville, Inc. (Meadowbrook) is the record owner of the condemned property. Bruce F. Campbell (Campbell) and his

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(iii) If a condemnee or any other person then refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a rule, returnable in five days after service upon the condemnee or the other person, to show cause why a writ of possession should not issue.

(iv) The court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned except as provided in this subsection upon payment to the condemnee or into court of the estimated just compensation and on any other terms as the court may direct.

26 Pa. C.S. §307(a)(1)(i), (iii), (iv).

² 65 Pa. C.S. §§701-716.

³ The declaration of taking attached the November 14, 2013 resolution approved by Condemnor's Board to condemn the property.

sister, Patricia C. Young (Young), own 50% of Meadowbrook's stock with the remaining 50% owned by parties who do not object to the taking.⁴

In 1999, Meadowbrook leased the property and buildings to CY Group to operate a nine-hole golf course. Campbell and Young own 100% of the stock issued by CY Group. In December 2013, CY Group and Campbell and Young filed separate preliminary objections to the declaration of taking claiming that the declaration of taking and Notice of Condemnation did not comply with notice requirements needed to be contained in the declaration of taking. They also contended that the taking is excessive and overbroad and that there were other lands that could be acquired or taken that are more suitable for Condemnor's needs at a purportedly lower cost.

On May 8, 2014, the trial court overruled Campbell and Young's preliminary objections as moot because they had been withdrawn and partially overruled CY Group's objections contesting the adequacy of the declaration of taking and notice of condemnation. Remaining were CY Group's preliminary objections regarding the excessiveness of the take and that there were more suitable alternatives for the school use which were scheduled to be heard on May 16, 2014.

⁴ Mrs. Joanne Brown and her four children collectively own the remaining 50% of the stock in Meadowbrook. They do not object to Condemnor's entry or possession of Meadowbrook's property subject to CY Group's possessory rights and have not taken or participated in or authorized any corporate action on Meadowbrook's behalf to impede or delay Condemnor's entry or possession.

The following day, on May 9, 2014, even though they had withdrawn their preliminary objections, Campbell and Young filed a declaratory judgment action in the trial court contending that the resolution that Condemnor adopted to condemn the property should be invalidated because Condemnor violated Sections 704⁵ and 708 of Pennsylvania's Sunshine Act⁶ by improperly taking official action regarding the condemnation at a number of executive sessions. While the cover sheet of the complaint stated that it was related to the pending eminent domain proceedings, it was not assigned to the judge that was considering the condemnation action.

As a result, on May 12, 2014, CY Group filed a motion to continue the hearing on its remaining preliminary objections regarding the breadth and scope of the taking that was scheduled for May 16, 2014, until after the disposition of Campbell and Young's complaint. The judge in the eminent domain case denied CY Group's continuance motion and the hearing was conducted on the remaining preliminary objections.⁷

⁵ Section 704 of the Sunshine Act states in relevant part that "[o]fficial action and deliberations by a quorum of the members of any agency shall take place at a meeting open to the public...." 65 Pa. C.S. §704.

⁶ While Section 708(a) of the Sunshine Act states that Executive Sessions may be conducted for six enumerated purposes, including consideration of the purchase or lease of real property up to the time an option or agreement to purchase or lease is executed, the condemnation of real property is not one of the specified purposes. 65 Pa. C.S. §708(a).

⁷ At the hearing, Keith Lieberman, an engineer with T&M Associates, stated that the Meadowbrook property is located near Condemnor's administrative offices; Phoenixville Area High School; Phoenixville Area Middle School; athletic fields and other facilities. He stated that the land taken was needed to allow for construction of buildings that ultimately would accommodate 2,000 students in an elementary school, and that six proposed athletic fields **(Footnote continued on next page...)**

On May 22, 2014, after the hearing was held on the remaining preliminary objections, CY Group filed a motion to consolidate the eminent domain and declaratory judgment actions.⁸ On June 27, 2014, the trial court overruled CY Group's remaining preliminary objections regarding the excessiveness of the taking. CY Group did not appeal the orders denying their preliminary objections, but instead filed a post-trial motion. A hearing on CY Group's post-trial motion was scheduled for September 2014.

On July 23, 2014, Condemnor filed a petition for a writ of possession and the following day the judge in the eminent domain case issued a rule to show cause why the writ should not issue within five days. On July 28, 2014, CY Group filed an answer and a motion to deny grant of possession or to postpone it until the disposition of the post-trial motion or the declaratory judgment complaint.

Ultimately, on August 20, 2014, the judge in the eminent domain case issued the instant orders denying CY Group's motion to consolidate, as well as

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necessary for physical education classes, playgrounds and fields would also be adjacent to the high school and middle school. He also testified that the entire 50 acres would be necessary to institute the plan taking into consideration the location of parking spaces, open space and storm water management facilities that are all required by municipal ordinances.

⁸ Pa. R.C.P. No. 213(a) states, in pertinent part, that "[i]n actions pending in a county which involve a common question of law or fact or which arise from the same transaction or occurrence, the court ... on the motion of any party may order a joint hearing or trial of any matter in issue in the actions, may order the actions consolidated, and may make orders that avoid unnecessary cost or delay."

granting Condemnor a writ of possession for the property. Regarding Condemnor's petition for a writ of possession, the trial court noted that it had overruled all of CY Group's preliminary objections, and that CY Group did not appeal either of those orders so that Condemnor became the rightful owner of the property under the Eminent Domain Code and was entitled to immediate possession. (Trial Court 11/6/14 Opinion at 2-3). "For all intents and purposes, the condemnation action was complete upon disposition of the preliminary objections, except for an award of just compensation." (*Id.* at 6). Regarding consolidation of the eminent domain and declaratory judgment actions, the trial court explained that while both arose from the condemnation of Meadowbrook's property, the two actions involve different parties, are at different procedural postures, and involve different legal and factual issues. (*Id.* at 4-6). "Consolidation of these actions would not avoid unnecessary costs or delay and would only service to improperly delay [Condemnor]'s taking of the property." (*Id.* at 6). In September 2014, CY Group withdrew its post-trial motion and filed the instant appeal of the trial court's August 20, 2014 orders denying its petition to consolidate and issuing the writ of possession.⁹

⁹ This Court's review of the trial court's grant of a writ of possession is limited to determining whether the trial court abused its discretion, committed an error of law, or whether its findings and conclusions are supported by substantial evidence. *In re Condemnation of 30.60 Acres of Land*, 572 A.2d 242, 244 n. 4 (Pa. Cmwlth. 1990). Likewise, the trial court's decision to grant or deny a motion to consolidate under Pa. R.C.P. No. 213(a) is purely a matter of discretion. *Newtown Square East v. Township of Newtown*, 38 A.3d 1008, 1017 (Pa. Cmwlth. 2011), *aff'd*, 101 A.3d 37 (Pa. 2014). "A trial court commits an abuse of discretion only where the record indicates that the trial court misapplied the law, exhibited a manifestly unreasonable exercise of judgment, or when the final result evidences partiality, prejudice, bias, or ill-will." *Id.* (citation omitted).

CY Group argues that the trial court erred in denying consolidation of the eminent domain and declaratory judgment actions and in granting the petition for a writ of possession because both actions involve the invalidity of the condemnation due to Condemnor's Sunshine Act violations which required consolidation and compelled the trial court to deny Condemnor's possession of the property.

However, while Pa. R.C.P. No. 213(a) permits consolidation of cases "which arise from the same transaction or occurrence," it also requires that the cases "involve a common question of law or fact." CY Group's preliminary objections in the eminent domain matter that remained at the time that it sought consolidation solely related to the breadth and scope of the taking under the Eminent Domain Code and not to any purported procedural irregularity in the taking. The issue in the declaratory judgment action, seeking to enjoin all action relating to the declaration of taking, dealt solely with Condemnor's purported violations of the Sunshine Act¹⁰ in the approval of the resolution to condemn the

¹⁰ Even if it is assumed that Campbell and Young could establish the alleged violation of the Sunshine Act, it does not inevitably follow that the instant eminent domain proceedings would be enjoined or disrupted in any manner. First, this proceeding involved CY Group and the effect of a finding that there was a Sunshine Act violation would not serve to raise the issue and it would constitute an impermissible collateral attack on the unappealed final orders denying CY Group's preliminary objections. Second, just because there is a finding that there was a Sunshine Act violation does not necessarily mean that the resolution itself would be invalid. *See, e.g., Borough of East McKeesport v. Special/Temporary Civil Service Commission of Borough of East McKeesport*, 942 A.2d 274, 280 (Pa. Cmwlth. 2008) ("Section 713 of the Sunshine Act authorizes the court to impose sanctions upon an agency that violates the Sunshine Act; it states, in relevant part, that [']should the court determine that the meeting did not meet the requirements of this chapter, *it may in its discretion* find that any or all official action taken at the meeting shall be invalid.['] 65 Pa. C.S. §713 (emphasis added). A court's decision to invalidate an agency's action is discretionary, not obligatory, as contended by the Borough....").

property that was attached to the declaration of taking. There were neither common issues of law nor fact in these disparate statutory proceedings, even though both ultimately related to the condemnation of Meadowbrook's property. As a result, the trial court did not err in denying CY Group's motion to consolidate them under Pa. R.C.P. No. 213(a). *See, e.g., Gerbracht v. Fairview, Harborcreek and Millcreek Townships UCC Appeals Board*, 61 A.3d 1073, 1081 (Pa. Cmwlth. 2013) ("Here, although construction of the beach house creates the need for both the building permit and the road occupancy permit, consolidation of the appeals is unwarranted because the permits were revoked by different entities, at different times, and under different circumstances.").

Finally, regarding the trial court's grant of Condemnor's petition for a writ of possession, Section 307(a)(1)(iv) of the Eminent Domain Code states, in relevant part, that "[t]he court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned ... upon payment ... into court of the estimated just compensation...." 26 Pa. C.S. §307(a)(1)(iv). As a result, a trial court can only refuse to issue a writ of possession if the condemnee proves by clear and convincing evidence that the condemnor acted with fraud or palpable bad faith in making payment of or offering estimated just compensation. *Redevelopment Authority of Wilkes-Barre v. Serafin*, 404 A.2d 440, 442 (Pa. Cmwlth. 1979). Because there were no preliminary objections pending at the time that the petition for the writ was filed and there is no allegation of fraud or palpable bad faith, the trial court did not err in granting the petition.

Moreover, CY Group's claim that the pending motion for post-trial relief and the pending complaint for declaratory and injunctive relief precluded issuing the writ is unavailing. Section 307(a)(2) of the Eminent Domain Code states that "[a] court may issue a writ of possession prior to the disposition of preliminary objections." 26 Pa. C.S. §307(a)(2). As a result, a trial court does not abuse its discretion in issuing a writ of possession while its order overruling preliminary objections is on appeal because Section 307(a)(2) permits the writ prior to the disposition of the preliminary objections. *In re Condemnation No. 2*, 943 A.2d 997, 1003-04 (Pa. Cmwlth. 2007), *appeal denied*, 954 A.2d 578 (Pa.), *cert. denied*, 555 U.S. 1070 (2008). Likewise, the trial court properly issued the writ in this case even though there was an outstanding post-trial motion and declaratory judgment complaint because its orders denying CY Group's preliminary objections were not appealed. Finally, should CY Group ultimately prevail in the other proceedings, "[S]ection 307(a)(2)(ii), 26 Pa. C.S. §307(a)(2)(ii), provides a remedy in the nature of the recovery of costs and expenses and the revesting of title in the event that a condemnation is finally determined to be invalid after the granting of possession under [S]ection 307(a)(1)." *In re Condemnation by Pennsylvania Turnpike Commission*, 84 A.3d 768, 778 (Pa. Cmwlth. 2014).

Accordingly, for the foregoing reasons, the trial court's orders are affirmed.

DAN PELLEGRINI, President Judge

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ORDER

AND NOW, this 28th day of May, 2015, the orders of the Chester County Court of Common Pleas dated August 20, 2014, at No. 2013-11251, are affirmed.

DAN PELLEGRINI, President Judge