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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEWJERSEY
HUDSON COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. L-005231-17

JERSEY CITY
REDEVELOPMENT
AGENCY,

Plaintiff,

v.

RJ WOODWARD, LLC,

Defendant.

APPROVED FOR PUBLICATION

January 30, 2020

COMMITTEE ON OPINIONS

Decided: April 26, 2019

James Graziano, for plaintiff (Archer & Greiner, PC, attorneys).

Ryan Malc, for defendant (Bathgate Wegener & Wolf, PC, attorneys).

BARISO, A.J.S.C.

This motion -- to extend the time to file an appeal of a commissioners' award arising out of an order to show cause in condemnation -- presents a matter of first impression: whether, given the filing of a commissioners' award lacking the required oath, defendant timely filed an appeal of that award and, if not,

whether, under Rule 4:73-6, good cause exists to extend the time to file the appeal. For the reasons that follow, the court concludes that the appeal was timely, and, in any event, good cause exists to extend the time to appeal.

FACTUAL BACKGROUND

On December 27, 2017, the Jersey City Redevelopment Agency (“JCRA”) filed an order to show cause in condemnation against Stretke NY, LLC (“Stretke”) as owner of the property subject to condemnation. JCRA later learned that Stretke no longer owned the property. On July 26, 2018, an order was entered dismissing Stretke from the case and granting JCRA leave to file an amended complaint against RJ Woodward, LLC (“Woodward”), the new property owner. JCRA filed its amended verified complaint on August 7, 2018, and Woodward filed its answer on September 12, 2018.

On December 3, 2018, an order for judgment and appointing commissioners was entered. It required that a commissioners’ report be completed and filed on or before January 31, 2019. The commissioners held a hearing on January 7, 2019. Woodward’s designated trial counsel attended the hearing on its behalf.

On February 15, 2019, the report of commissioners was filed electronically on eCourts. It consisted of the commissioners’ award (assessing the value of the property according to the commissioners) and an appraisal

report, but, tellingly, it was incomplete: it did not include the statutorily required commissioners' oath. N.J.S.A. 20:3-12(b) (requiring that "commissioners shall take and subscribe an oath faithfully and impartially to perform their duties, and to make a true award to the best of their skills and understanding, which oath shall be filed with their award"). In fact, the oath of commissioners was not filed until March 4, 2019; notably, two of the commissioners did not sign the oath until after the report was filed. On March 15, 2019, JCRA filed a proposed final judgment.

On March 18, 2019, Woodward filed a notice of appeal in the form of a motion. Protecting against the possibility that its notice of appeal was untimely, Woodward also filed a motion seeking to extend the time to file its appeal. On April 4, 2019, JCRA filed its opposition to the motion to extend the time to appeal, and, on April 8, 2019, Woodward filed its reply. Oral argument was heard on April 12, 2019.

DISCUSSION

The parties have stipulated that there are no material issues of fact. The two remaining issues of law are: (1) whether the twenty-day period to file an appeal of the commissioners' award started to run when the incomplete commissioners' report was filed on February 15, 2019, or when the commissioners corrected their mistake by filing the required commissioners'

oath on March 4, 2019; and (2) whether Woodward has shown good cause to extend the time to file an appeal pursuant to Rule 4:73-6.

The time to appeal started when the complete commissioners’
report was filed

Woodward asserts that the February 15, 2019 commissioners’ report was invalid and illegal when filed because it lacked the required commissioners’ oath. It argues that the time to file an appeal was not triggered until March 4, 2019, when the missing commissioners’ oath was filed, thereby finalizing a valid, and hence appealable, award. Because the March 18, 2019 filing of the appeal was within twenty days from the filing of the commissioners’ oath, Woodward asserts that its appeal was timely. This court agrees.

N.J.S.A. 20:3-13(a) states that any party who appeared at the commissioners’ hearing may appeal the commissioners’ award “within the period and in a manner provided by the rules.” Rule 4:73-6 provides the mechanism for appeal: “[a]n appeal from the report of the commissioners shall be taken by an appellant by filing a notice of appeal . . . within 20 days after the date of service upon him or her, by mail or otherwise, of a copy of the report.”

It is uncontested that Woodward has the right to appeal the commissioners’ award because it is party to the litigation and its designated trial counsel was present at the commissioners’ hearing on January 7, 2019. See N.J.S.A. 20:3-13(a). The albeit incomplete commissioners’ report was filed and

served via eCourts on February 15, 2019. However, the oath of commissioners was not filed with the report. The statutory obligation is clear and is couched in mandatory language: “[t]he commissioners shall take and subscribe an oath faithfully and impartially to perform their duties, and to make a true award to the best of their skills and understanding, which oath shall be filed with their award.” N.J.S.A. 20:3-12(b) (emphasis added). In order to determine when the twenty-day appeal period is triggered, the interplay between Rule 4:73-6 and N.J.S.A. 20:3-12(b) is critical: when does a commissioners’ report “filed” without the required commissioners’ oath start the twenty-day period to appeal. Because Rule 4:73-6 and N.J.S.A. 20:3-12(b) are inextricably bound, they must be reconciled, particularly when, as here, neither the Rule nor the statute take into account the commissioners’ mistake presented in this application.

Where the plain language of the statute is clear, a court shall enforce the statute as written. DiProspero v. Penn, 183 N.J. 477, 492 (2005). N.J.S.A. 20:3-12 clearly and unequivocally requires that the commissioners must take an oath that must be filed with the commissioners’ award. Stated differently, a commissioners’ report filed without the required commissioners’ oath plainly does not comply with the statutory requirements; it is invalid and ineffective.

The commissioners’ report filed on February 15, 2019 was invalid and ineffective because it lacked the required commissioners’ oath. That conclusion

is underscored by the fact that, when the commissioners' report was filed prematurely, two of the three commissioners had yet to take and sign the oath: they signed the oath after the fact, one on February 20, 2019, and the other on February 25, 2019. The report was incomplete and, thus, invalid until March 4, 2019, when the commissioners' oath was filed and served. The March 4, 2019 filing of the oath validated the prematurely filed and incomplete commissioners' report and then, and only then, triggered the twenty-day period to appeal the award. For that reason, the time to appeal the award under Rule 4:73-6(b) began on March 4, 2019, when the commissioners' report and award were legitimized by the filing of the oath, and ran until March 24, 2019, making Woodward's March 8, 2019 appeal timely.

This does not suggest that a property owner has no remedy when an invalid or incomplete report is filed. Nor is there an unlimited, indefinite period of time within which to file an appeal when an oath is not filed. In that instance, the property owner's or the condemning body's remedy is clear: it may challenge the incomplete commissioners' report on its face and have it set aside as invalid for failing to comply with the statute's requirements. See Bennett v. Camden & Amboy R.R. & Transp. Co., 14 N.J.L. 145, 153 (1833) (holding that good cause exists to set aside report of commissioners where commissioners failed to take required statutory oath). The determination of when the

twenty-day period to appeal begins performance must be made on a case-by-case basis. The facts here stand out because the commissioners recognized and corrected their mistake by filing the oath within the twenty-day period within which the parties could challenge the commissioners' report for its statutory invalidity.

It is undisputed that, on February 15, 2019, the commissioners failed to comply with the statute when they neglected to take the oath and file it with the commissioners' report. See N.J.S.A. 20:3-12(b). Thus, Woodward had twenty days from February 15, 2019 -- or until March 7, 2019 -- to challenge the commissioners' report on the basis that it was incomplete and invalid because it did not include the required commissioners' oath.¹

To be sure, challenging a commissioners' report for its invalidity is distinct from an appeal of the commissioners' award. An appeal of the award is a due process right: it enables empaneling a jury to decide what sum of money is "just compensation" for the property being condemned. Logically, a legitimate, complete commissioners' report and award is a necessary condition precedent to an award. If the commissioners' report is incomplete, the

¹ Under Rule 4:73-6, an appeal of the commissioners' award must be filed within twenty days from the service of the report; the same twenty-day limit applies to challenges to a commissioners' report for its invalidity or incompleteness.

appropriate remedy is to challenge the sufficiency of the commissioners' report and have it set aside for good cause. See Bennett, 14 N.J.L. at 150-51.

Woodward's time to challenge the commissioners' report had not yet expired when, on March 4, 2019, the commissioners cured their mistake by filing their oath on eCourts. This correction superseded any unfiled challenge to the commissioners' report based on its failure to comply with the statute, despite the fact that there was time remaining -- three days left -- to file the challenge. If the time to file an appeal of the commissioners' award also began on February 15, 2019, when the incomplete commissioners' report was filed, then Woodward effectively would have been left with only three days to challenge the commissioners' award once the commissioners' report was made complete on March 4, 2019. That conclusion cannot be sustained.

The Legislature could not have intended to allow commissioners to foreclose a party's appeal rights by simply delaying the filing of a complete commissioners' report -- for example, by delaying the filing of the required commissioners' oath -- until the eleventh hour. "It must be remembered that the power to take property through eminent domain is one of the most intrusive aspects of sovereignty." State by Comm'r of Transp. v. D'Onofrio, 235 N.J. Super. 348, 353 (Law Div. 1989). The "legislative objective" of the statute is to "assure that every reasonable consideration is given to a property owner

before this invasive power [of eminent domain] is exercised.” Ibid. Giving a property owner less than the full twenty days within which to appeal a properly filed commissioners’ award certainly cannot be reconciled with the core notion of allotting the property owner “every reasonable consideration” to ensure just compensation. Instead, when reconciling the statute and the Rule, there is a distinct and palpable public interest in giving property owners the full, allotted twenty days to appeal a commissioners’ award that the commissioners failed to assure was compliant when originally filed.

Because it was not accompanied by the required commissioners’ oath, the February 15, 2019 filing of the commissioners’ report did not trigger the twenty days to appeal the commissioners’ award. In those circumstances, Woodward’s remedy was to challenge the statutory sufficiency of the commissioners’ report and seek to have it set aside for failing to include the statutorily required oath. Woodward had twenty days, or until March 7, 2019 to challenge the incomplete commissioners’ report. However, on March 4, 2019, before the twenty days expired, the commissioners filed their oath, curing the deficiency of the commissioners’ report and mooting Woodward’s ability to have the incomplete commissioners’ report set aside. Again, in these circumstances, it was the March 4, 2019 filing of the commissioners’ oath -- which completed the statutory requirements for the filing of a commissioners’ report -- that triggered

the twenty-day period, until March 24, 2019, within which to appeal the now complete commissioners' award. Woodward's March 18, 2019 filing of the notice of appeal was six days before that deadline and was timely.

In sum, when a commissioners' report is incomplete as originally filed, it does not trigger the twenty-day appeal period; instead, it is subject to a twenty-day period within which to challenge its validity. When, as here, an incomplete commissioners' report is corrected before the twenty-day period to challenge the incomplete commissioners' report expires, the twenty-day period to appeal the commissioners' award begins when the defect in the commissioners' report is cured. This reasoning, analysis and conclusion are consistent with the legislative intent of the statute, the rationale undergirding the court rule, and the mandates of public policy.

Whether good cause exists to extend the time to appeal

Although Woodward's appeal was timely, for completeness's sake, Woodward's argument that good cause exists to extend the time to file the appeal also should be addressed.

Rule 4:73-6(a) states that "the court for good cause shown may extend the time [to appeal the commissioner report] for a period not exceeding 30 days." Thus, even if Woodward's appeal was untimely, the appeal still may be allowed

if Woodward shows good cause for failing to file the appeal within the twenty-day period. That showing has been made here.

In this context, attorney misfeasance is not good cause. Woodward admits that its appeal was not filed until March 18, 2019; it claims that it was due to a miscommunication within the law firm representing Woodward. Specifically, Woodward's designated trial counsel did not timely see the filing of the incomplete commissioners' report for the most basic of reasons: he is not listed or authorized to receive electronic notifications of filings on eCourts. However, an associate and two paralegals at the firm admittedly received electronic notice that the incomplete commissioners' report was filed, yet they failed to so inform Woodward's designated trial counsel. The unexplained failure to communicate within the law firm representing Woodward cannot and does not constitute good cause to extend time to file an appeal. On the contrary, it highlights the need for vigilance in the age of electronic filing and notices.

That said, the complexity of the issue in this case, and the need to reconcile the Rule and the statute, in the aggregate constitute good cause. As noted earlier, this is an issue of first impression. During oral argument, counsel for both parties -- who are experienced practitioners of impeccable professional standing -- admitted that they never had seen a commissioners' report filed without an accompanying commissioners' oath. Both parties advanced

legitimate arguments as to when the time to file the appeal began. Importantly, the confusion was not the fault of one party or another, but the result of the commissioners' failure to comply with the statute. It would be unjust and unfair to saddle Woodward with the commissioners' failure to follow simple statutory requirements. Therefore, if good cause was needed -- and it is not because the notice to appeal was timely filed on March 18, 2019 -- it is present here.

CONCLUSION

In the circumstances presented, the twenty-day period to appeal the commissioners' award started to run on March 4, 2019, when the commissioners' report was made complete by the filing of the oath of commissioners. The mistake by the commissioners will not abridge the property owner's ability to request a trial by jury to determine just compensation for the property. Woodward's March 18, 2019 notice of appeal was timely; solely as a housekeeping matter, Woodward's parallel motion to extend time to file an appeal is denied as moot.

An appropriate order follows.