SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1380-14T3
A-1781-14T3

TOWNSHIP OF PISCATAWAY,

Plaintiff-Respondent,

v.

SOUTH WASHINGTON AVENUE, LLC; RUTH HALPER, Executrix of the Estate of Herbert Halper; MARK HALPER, RUBY HALPER-ERKKILA, M.D.; FAITH ROST; RONALD HALPER; BONNIE HALPER; and CINDY HALPER-RAIMAN,

Defendants-Appellants/
Cross-Respondents,

and

LAURENCE HALPER,

Defendant-Respondent/
Cross-Appellant.

TOWNSHIP OF PISCATAWAY,

Plaintiff-Appellant/
Cross-Respondent,

v.

SOUTH WASHINGTON AVENUE, LLC; RUTH HALPER, Executrix of the Estate

of Herbert Halper; MARK HALPER, RUBY HALPER-ERKKILA, M.D.; FAITH ROST; RONALD HALPER; BONNIE HALPER and CINDY HALPER-RAIMAN,

Defendants-Respondents,

and

LAURENCE HALPER,

Defendant-Respondent/
Cross-Appellant.

Argued October 11, 2017 – Decided December 28, 2017

Before Judges Fuentes, Koblitz and Manahan.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-11715-99.

Arnold C. Lakind argued the cause for appellants/cross-respondents (in A-1380-14) and respondents (in A-1781-14) (Szaferman, Lakind, Blumstein & Blader, PC, attorneys; Arnold C. Lakind, of counsel and on the briefs).

Richard J. Mirra argued the cause for respondent (in A-1380-14) and appellant/cross-respondent (in A-1781-14) (Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys; Richard J. Mirra and Michael Baker, of counsel and on the briefs; Edward F. Ryan, Albert J. Alvarez and James F. Clarkin, III, on the briefs).

John F. Chiaia argued the cause for respondent/cross-appellant (in A-1380-14 and A-1781-14) (Chiaia & Associates, LLC, attorneys; John F. Chiaia and Steven Benedict, on the brief).

PER CURIAM

Plaintiff Township of Piscataway (Piscataway) appeals from an amended final judgment setting: the interest rate on a condemnation award; the date that interest is to be calculated on a portion of an environmental escrow; the portion of an environmental escrow that is not to earn interest; the interest rate; and the detailed calculations of the sums owed by Piscataway. Piscataway also appeals the standard of remediation for the property and the amount of the environmental escrow.

Defendants South Washington, LLC and the Halper family (collectively the Halpers) cross-appeal arguing that the Law Division judge erred in authorizing an interim distribution to Piscataway from the environmental escrow and limiting the award of interest on the unpaid balance of the condemnation award to the date Piscataway deposited the unpaid balance of the award.

Laurence Harper cross-appeals arguing that the Law Division judge erred by failing to provide him with relocation assistance and by awarding Piscataway removal expenses associated with his vehicles.

Having considered the record in light of the controlling law, we reverse the order relative to the standard of remediation and remand for a hearing to determine the appropriate escrow amount. We also reverse and hold the Halpers are entitled to interest on

the unpaid balance of the condemnation award. We affirm relative to the interest rate owed to the Halpers. Given our decision, we do not need to decide the issues raised on appeal and cross-appeal relating to withdrawal of the money held in escrow.

I.

This condemnation case with environmental implications has been litigated since 1999. We derive the following facts and procedural history from the record and from the three prior appeals decided by this court.

On December 10, 1999, Piscataway filed a condemnation action seeking to preserve a seventy-five acre farm within the Township as open space. Twp. of Piscataway v. South Washington Ave., LLC, 400 N.J. Super. 358, 361 (App. Div. 2008). The farm was owned by the Halpers. Ibid. In their answer, the Halpers challenged Piscataway's authority to condemn the farm. Ibid. On June 1, 2000, the Assignment Judge upheld the ordinance authorizing the condemnation and ordered Piscataway to provide the Halpers with a copy of the appraisal. Id. at 363. Thereafter, the judge again held for Piscataway and ordered the appointment of condemnation commissioners to determine the farm's fair market value as of the date the complaint was filed. Id. at 363-64. The Halpers appealed, and this court affirmed Piscataway's right to condemn

the property. Twp. of Piscataway v. South Washington Ave., LLC, No. A-2741-02 (App. Div. Mar. 19, 2004).

On September 3, 2004, Piscataway filed a declaration of taking and deposited in court its estimated fair market value of the property calculated as of the filing date of the condemnation action. Twp. of Piscataway, 400 N.J. Super. at 361. The estimate totaled approximately $4.3 million, which the Halpers were permitted to withdraw, pursuant to an order of the court, while still challenging Piscataway's right to condemn. Id. at 361, 65.

During the five years between the filing of the complaint and the declaration of taking, the value of the property increased substantially due to market forces and inflation. Id. at 361. Consequently, a dispute arose over the proper valuation date; defendant argued it should be the date of filing of the declaration of taking, while Piscataway reasserted it should be the date the complaint was filed. Id. at 361-62. On March 31, 2005, the judge held the valuation date would remain as the date the complaint was filed. Id. at 364.

For reasons not relevant to this appeal, the case was later assigned to a different judge. Id. at 365. Subsequently, on September 6, 2005, the Halpers moved for a stay of possession and for reconsideration of the valuation date. Twp. of Piscataway, 400 N.J. Super. at 365. The judge held for the Halpers, granting

the stay and setting the valuation date to the date on which the declaration of taking was filed, September 3, 2004. Ibid. Piscataway's successive leave to appeal was denied. Ibid.

Thereafter, in March 2006 following a jury trial, the jury determined the farm's fair market value to be $17,955,000. Ibid. Piscataway appealed, arguing the judgment should be reversed and a new trial held to determine the proper valuation date. Id. at 362. In resolution of the issue of the valuation date, in 2008, we affirmed the Law Division judge's determination, holding,

> [W]hen property increases in value between the date the complaint was filed and the date the declaration of taking was filed and the deposit made, and the increase is not due to governmental action but to market forces and inflation, the date of valuation must be the date of the deposit.
>
> [Id. at 362-63.]

On February 6, 2006, subsequent to the trial but prior to the entry of final judgement, the Halpers sought emergent relief to remain in possession of the property. Twp. of Piscataway, 400 N.J. Super. at 365. Piscataway opposed the relief and requested a stay to prevent the Halpers from withdrawing deposited funds. Ibid. The Court granted Piscataway's motion and ordered the matter stayed until July 10, 2006. Ibid.

In May 2006, Dr. John Trela, of TRC Raviv Associates, Inc., was jointly selected by the parties and appointed as an independent

expert by consent order. Trela was charged with providing recommendations:

> concerning the amount which should be established as a Reserve to pay for the projected costs to remediate the Property . . . given [Piscataway's] planned use of the Property for a park with both active and passive recreation, and for farming. Dr. Trela shall also advise the Court separately concerning the cost to remediate the Property to the unrestricted cleanup criteria of the New Jersey Department of Environmental Protection (NJDEP) . . . if that cost is different. In consenting to the independent expert's rendering a report which considers remediation costs both from the perspective of a cleanup with and without engineering and institutional controls, neither party waives its legal position concerning the required cleanup standard and the corresponding reasonable cost of achieving the standard as determined by Dr. Trela.

The consent order permitted the court to "consider the parties' legal arguments and decide the weight to give each of Dr. Trela's recommendations." The recommendations would only be reviewable for gross error or mistake of fact.

At a July 2009 hearing, parties' respective experts testified regarding the issue of interest to be paid on the condemnation award and any related offsets. In a written decision, the judge concluded that interest should accrue as of September 4, 2004 in order to avoid unjust compensation. The judge awarded compound interest at the prime rate "because Piscataway, a low-risk

investor, would likely have to pay a lender to secure a loan in the same amount, and the lender would have the benefit of earning not only the interest but also the ability to generate additional income from the interest." Twp. of Piscataway v. South Washington Ave., LLC, No. A-0356-10 (App. Div. Aug. 23, 2011) (slip op. at 9).

Thereafter, the parties filed an appeal and cross-appeal which included "the Halpers' claim that the court erred in denying statutory interest from the date of the complaint." Id. at 2. Piscataway claimed that the award of compound interest was excessive. Id. at 3. This court held that "[a]lthough we agree that N.J.S.A. 20:3-31 requires interest as of the date of the complaint, we cannot conclude that the Halpers demonstrated a loss attributable to delayed payment prior to that date[, so] we affirm the denial of interest for that period." Id. at 2-3. Concerning Piscataway's claim, we determined that,

> [b]ecause the court did not provide findings of facts and reasons adequately explaining the award of compound interest at the prime rate, and because interest was reduced to a dollar amount before resolution of Piscataway's demand for a Suydam[1] escrow trust, we reverse and remand . . . .
>
> [Id. at 3.]

[1] Hous. Auth. v. Suydam Inv'rs, LLC, 177 N.J. 2 (2003).

This court further held:

> 1) The court's determination to deny interest for the period prior to September 3, 2004 is affirmed on the ground that [the Halpers] received a fair equivalent of the benefit they would have had if they obtained payment on December 10, 1992; 2) the order purporting to reduce interest to a dollar amount is vacated; 3) before recalculating interest the court must resolve the question of a trust escrow; and 4) before reducing interest to a dollar amount, the court must a) reconsider the award of compound interest and set forth its findings and reasons and b) consider the question of profits upon presentation of competent evidence or stipulation.
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> [Twp. of Piscataway, slip op. at 18-19 (App. Div. Aug. 23, 2011).]

In September 2012, Piscataway filed a motion to set the appropriate level of remediation for the property. Piscataway moved to have the environmental escrow determined as if the level of cleanup was that required for residential use and to set the escrow in a sufficient amount to allow for cleanup. On November 26, 2012, the trial court denied Piscataway's motion and ordered the cleanup be determined as if the property was developed for use as a park. Subsequently, the Halpers filed a motion for a determination of the environmental escrow, a redetermination of the interest award and fair rental value of the property during the period the Halpers remained in possession, and an entry of final judgment.

Piscataway filed a motion seeking reconsideration of the November 26 order. The judge denied the Halpers' motion and set the environmental escrow amount at $1,720,000. The Halpers' motion to re-open discovery was also denied. Subsequently, in March 2014, the Halpers filed a motion for redetermination of interest and entry of final judgment.

In an amended order dated November 6, 2014, the judge held, among other holdings, that: 1) the interest on the undeposited balance of the condemnation award would be calculated at the prime rate compounded annually; 2) the Halpers were entitled to interest accrued up to April 29, 2009 at the prime rate compounded annually on the portion of the environmental escrow refunded to the Halpers; 3) the Halpers were not entitled to earn interest on the portion of the environmental escrow not refunded to the Halpers; 4) the interest on the environmental escrow would not be included in the calculation of the amount to be paid to the Halpers; and 5) the judgment would not be paid until the Supreme Court lifted or vacated the stay entered on May 5, 2006. The order provided a detailed calculation of the sums owed to the Halpers.

The Halpers filed an application seeking vacation of the Supreme Court stay on December 22, 2014, which Piscataway opposed. The motion was granted by the Court on March 10, 2015.

Piscataway appealed and the Halpers cross-appealed from various parts of the November 6, 2014 final order. Laurence Halper also filed a cross-appeal. Piscataway moved to consolidate the appeals, which the Halpers joined.

II.

Piscataway raises the following points on A-1380-14:

POINT I

> THE TRIAL COURT'S RULING [TO PERMIT] THE TOWNSHIP OF PISCATAWAY TO USE ENVIRONMENTAL ESCROW TOWARDS REMEDIATION EFFORTS SHOULD BE AFFIRMED.

POINT II

> PLAINTIFF'S OBLIGATION TO PAY INTEREST CEASED WHEN THE BALANCE OF THE CONDEMNATION AWARD WAS PAID INTO THE COURT'S CONDEMNATION UNIT.

Piscataway argues in opposition to Laurence Halper's cross-appeal the following point:

POINT I

> DEFENDANT LAURENCE HALPER'S CROSS-APPEAL IS BARRED BASED UPON ISSUE PRECLUSION, ESTOPPEL OR WAIVER.

Piscataway raises the following points on A-1781-14:

POINT I

> THE COURT ERRED IN FIXING THE AMOUNT OF THE ENVIRONMENTAL ESCROW TO REMEDIATE AND CLEAN UP THE PROPERTY BASED UPON A RESTRICTED USE.

A. UNRESTRICTED CLEANUP BASED UPON RESIDENTIAL USE IS THE ONLY FAIR CLEANUP STANDARD.

B. PLAINTIFF SHOULD NOT BE BURDENED WITH CONTINUING LIMITATIONS ON THE USE OF THE PROPERTY DUE TO INSTITUTIONAL AND ENGINEERING CONTROLS.

C. THE TRIAL COURT'S ORDER UNDERMINES PUBLIC ENTITY IMMUNITY UNDER THE SPILL ACT.

D. THE TRIAL COURT ERRED IN FAILING TO TAKE ACCOUNT OF INCREASED COSTS OF REGULARTORY COMPLIANCE.

POINT II

THE COURT ERRED IN DETERMINING THE RATE AND METHOD OF CALCULATING INTEREST OWED TO DEFENDANTS.

A. THE COURT ERRED IN AWARDING INTEREST AT THE PRIME RATE.

B. THE COURT ERRED IN AWARDING COMPOUND [INTERESTS] RATHER THAN SIMPLE INTEREST.

POINT III

THE COURT ERRED IN AFFIRMING THE TRIAL COURT'S ORDER SETTING THE VALUATION DATE AS THE DATE OF THE TAKING AND NOT THE DATE THE COMPLAINT WAS FILED.

POINT IV

THE COURT ERRED IN FIXING CONDITIONS WITH RESPECT TO WITHDRAWL OF FUNDS FROM THE ENVIRONMENTAL ESCROW ON DEPOSIT WITH THE COURT.

The Halpers raise the following points on the cross-appeal on A-1380-14:

POINT I

THE TRIAL COURT ERRED IN AUTHORIZING PISCATAWAY TO USE MONEY HELD IN THE ENVIRONMENTAL ESCROW TO PAY THE COSTS OF INVESTIGATION OF CONTAMINATION ON THE PROPERTY BECAUSE SUYDAM DOES NOT AUTHORIZE SUCH AN INTERIM DISTRIBUTION FROM AN ENVIRONMENTAL ESCROW FUND.

POINT II

DEFENDANTS ARE ENTITLED TO INTEREST ON THE UNPAID BALANCE OF THE CONDEMNATION AWARD UNTIL THE AWARD WAS ACTUALLY DISTRIBUTED TO THEM BECAUSE PISCATAWAY PREVENTED DEFENDANTS FROM WITHDRAWING MONEY FROM COURT.

The Halpers raise the following points in response to Piscataway's cross-appeal:

POINT I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT THE APPROPRIATE ENVIRONMENTAL ESCROW FOR THE ESTIMATED COST OF REMEDIATION OF CONTAMINATION ON THE SUBJECT PROPERTY IS $1,720,000.

POINT II

THE TRIAL COURT'S DETERMINATION THAT DEFENDANTS SHOULD BE ALLOWED INTEREST ON THE UNDEPOSITED BALANCE OF THE CONDEMNATION AWARD AT THE PRIME RATE, COMPOUNDED ANNUALLY, DID NOT CONSTITUTE AN ABUSE OF DISCRETION.

POINT III

PISCATAWAY'S ARGUMENT THAT THIS COURT ERRED IN AFFIRMING THE ORDER SETTING THE VALUATION DATE AS THE DATE OF THE TAKING RATHER THAN THE DATE THE COMPLAINT WAS FILED IS FORCLOSED BY THE "LAW OF THE CASE" DOCTRINE.

POINT IV

THE COURT DOES NOT NEED TO REACH THE QUESTION WHETHER THE TRIAL COURT ERRED IN IMPOSING CONDITIONS UPON THE DISTRIBUTION OF FUNDS FROM THE ENVIRONMENTAL ESCROW TO PAY THE COSTS OF INVESTIGATION OF CONTAMINATION ON THE SUBJECT PROPERTY BECAUSE SUYDAM DOES NOT AUTHORIZE AN INTERIM DISTRIBUTION FROM THE ESCROW FOR THIS PURPOSE.

The Halpers raise the following points on A-1781-14:

POINT I

SUYDAM ONLY AUTHORIZES A DISTRIBUTION FROM AN ENVIRONMENTAL ESCROW FUND TO SATISFY THE JUDGMENT ENTERED IN A COST RECOVERY ACTION; IT DOES NOT AUTHORIZE AN INTERIM DISTRIBUTION FROM THE FUND TO PAY THE CONDEMNOR'S COSTS IN INVESTIGATING CONTAMINATION ON THE SUBJECT PROPERTY.

POINT II

THE AWARD OF INTEREST ON THE UNPAID BALANCE OF THE CONDEMNATION AWARD THAT PISCATAWAY PREVENTED DEFENDANTS FROM WITHDRAWING FROM COURT FOR NEARLY NINE YEARS WOULD NOT RESULT IN DEFENDANTS OBTAINING A DOUBLE RECOVERY OF INTEREST.

Laurence Halper raises the following points in his cross-appeal in A-1380-14 and A-1781-14:

POINT I

THE TRIAL COURT ERRED IN FAILING TO PROVIDE RELOCATION ASSISTANCE TO LAURENCE HALPER.

POINT II

THE TRIAL COURT IMPROPERLY AWARDED REMOVAL EXPENSES TO PISCATAWAY FOR LAURENCE HALPER'S VEHICLES WHEN RELOCATION COSTS ARE TYPICALLY PAID TO THE CONDEMNEE BY THE CONDEMNOR.

Our standard of review is settled. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). An appellate court, however, should defer to the factual findings of the trial judge that are supported by adequate, substantial and credible evidence in the record. Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974).

III.

We first address the issue in dispute upon which our decision hinges which pertain to the proper method of determining the standard of remediation. Piscataway argues, in reliance on Suydam, that the fixed amount of the environmental escrow was erroneously based upon use of the property as a park, which calls for a lower standard of remediation, rather than for its "highest and best" use as a residential property. The Halpers responded that since Piscataway obtained the farm under the Open Space Act, N.J.S.A.

40:12-14 to -15.9, the township is bound to use the property for recreation or conservation purposes only.

Our Supreme Court held that for purposes of valuation of contaminated property, "valuing property as if remediated assures just compensation insofar as it relates to the notion of 'highest and best use.'" Suydam, 177 N.J. at 23. "[W]here property is contaminated, the condemnor should appraise as if remediated and deposit that amount into a trust-escrow account in court. In addition, the condemnor should reserve its right to initiate a separate action to recover remediation costs." Id. at 24. The Court then provided procedural guidance, stating:

> Under the trust-escrow approach, when the condemnee makes a motion pursuant to [Rule] 4:73-9(c) to withdraw the money paid into court the condemnee, in many instances, will agree with the proffered amount of the transactional costs, thus forestalling any further controversy. When there is a dispute over the amount however, a trial-type hearing will be held under [Rule] 4:73-9(b) at which the condemnor will bear the burden of supporting the estimate of the transactional costs. If that burden is sustained, the withholding will be allowed and if not, the full amount will be released.
>
> [Id. at 26-27.]

During the pendency of this appeal, we decided N.J. Transit Corp. v. Franco, 447 N.J. Super. 361 (App. Div. 2016), certif. denied, 230 N.J. 504 (2017). In Franco, we held that "the escrow

for the estimated costs of environmental cleanup of a condemned contaminated property should be based on the remediation necessary to achieve the highest and best use of the property used to calculate the amount of the condemnation award." Id. at 387-88. We made this determination based on the rationale of Suydam, where the Court based the valuation of the contaminated property as if it was remediated for its "highest and best use." Id. at 386-87 (citing Suydam, 177 N.J. at 27).

In Franco, defendants argued the estimate of remediation costs should have been based on the use of the property that plaintiff originally intended, which was a lower use than the highest and best use of the property as a residential development. Id. at 386. The property's fair market value was determined as if it was remediated for residential development. Id. at 388. We disagreed with defendants in holding that they "would receive an unfair windfall if they were awarded the enhanced value of the [p]roperty as if remediated for residential development, without withholding the cost of such remediation." Id. at 387. By our holding, both the condemnor and condemnee would be treated fairly. Franco, 447 N.J. Super. at 388. We provided that "if plaintiff does not incur the full cost of remediating the [p]roperty to the 'high occupancy' level, defendants will receive the resulting surplus funds from the escrow." Id. at 389.

As such, in accord with Franco, the proper standard for remediation to be employed by the court is the "highest and best" use of the property as a residential development, rather than as a park. Consequently, notwithstanding the Halpers' arguments to the contrary, we are constrained to reverse and remand for further proceedings before the Law Division to determine the appropriate escrow amount.

During oral argument, counsel for the Halpers argued that there was no need for a remand as Trela's report provided alternative costs based upon remediation for residential use. Counsel further argued, consonant with the Halpers' brief, that any additional costs associated with remediation should be borne by Piscataway. The Halpers contend that Piscataway should be responsible for the incurrence of these costs based upon the township's failure to apply for and obtain approval of a remediation plan prior to the change in remediation standards in 2012. We disagree for two reasons.

First, relative to the need for a remand, it is clear from Trela's updated report of February 28, 2013, there were several changes in applicable NJDEP regulations that impacted upon the scope of remediation that could cause an increase in cost for the remediation. Due to the change in the regulations, Trela submitted

a Change Order Request (Change Order) to include the following tasks:

> [A] Determine the site-specific applicable remediation standards for the identified contaminants of concern considering two alternative conditions: (1) residential site use; and (2) a park for recreational use;
>
> [B] Conduct additional soil and groundwater sampling to "re-delineate" the extent of contamination based on recently adopted applicable regulatory requirements and the amended May 7, 2012 New Jersey Remediation Standards N.J.A.C. 7:26(d). The "re-delineation" will be completed utilizing the historical data supplemented by the proposed additional sampling;
>
> [C] Revise the February 28, 2013 updated cost estimates for Remedial Alternatives Nos. 2, 3a, & 3b based on the "re-delineated" extent of contamination and the current and additional use scenarios identified in Task 1; and
>
> [D] Develop a new remedial alternative and associated implementation cost using NJDEP's new compliance averaging guidance, if permitted by the new and available sampling data.

We conclude that the amended report and the change order provide ample support to pursue further studies to determine the cost of remediation. In light of Franco, as well as the change in the DEP regulations, those studies are required as the result will allow for an informed decision regarding the appropriate escrow amount.

Second, to lay blame on Piscataway for delay in obtaining approvals from the NJDEP prior to the change in the regulations, ignores the history of this litigation. As readily discernable from the procedural history recited herein, all parties have sought judicial intervention on numerous matters in dispute over the course of almost two decades.

Further, the argument that Piscataway should bear any additional costs for remediation sounds in estoppel. "Equitable estoppel is 'rarely invoked against a governmental entity.'" Middletown Twp. Policemen's Benevolent Ass'n v. Twp. of Middletown, 162 N.J. 361, 367 (2000) (quoting Wood v. Borough of Wildwood Crest, 319 N.J. Super. 650, 656 (App. Div. 1999)). Principles of equitable estoppel "'are relevant in assessing governmental conduct' and impose a duty on the court to invoke estoppel when the occasion arises." Middletown, 162 N.J. at 367. "The essential elements of equitable estoppel are a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment." O'Malley v. Dep't of Energy, 109 N.J. 309, 317 (1987).

"Equitable estoppel may be invoked against a [public body] 'where interests of justice, morality and common fairness clearly

dictate that course.'" Middletown, 162 N.J. at 367 (quoting Gruber v. Mayor and Twp. Comm. of Raritan, 39 N.J. 1, 13 (1962)). Doctrines of estoppel may be applied against the State, but are not applied "to the same extent as they are against individuals and private corporations." See Bayonne v. Murphy & Perrett Co., 7 N.J. 298, 311 (1951).

There is no proof that Piscataway knowingly delayed in seeking approval for remediation, or misrepresented its intention to seek approval. In the absence of misrepresentation, there is no basis to invoke estoppel.

IV.

We next address those arguments that are unaffected by Franco. In doing so, we first note that the argument raised by Piscataway relating to the proper valuation date was decided by this court in Township of Piscataway, 400 N.J. Super. at 362-63. Piscataway's counsel stated during oral argument that Piscataway raised this argument solely to preserve it for further review. As such, we do not address that argument.

Piscataway also argues the trial court should have awarded simple interest at the cash management fund rate on the portion of the environmental escrow, rather than compound interest at the prime rate. The judge conducted an evidentiary hearing, where both parties presented expert witnesses. In a written opinion,

the judge held the prime interest rate applied and interest accrue on a compound basis. The judge affirmed the decision upon Piscataway's motion for reconsideration.

Under the Eminent Domain Act, "[u]nless agreed upon by the parties, the amount of such interest shall be fixed and determined by the court in a summary manner after final determination of compensation, and shall be added to the amount of the award or judgment, as the case may be." N.J.S.A. 20:3-32. "The allowance of interest on an award of condemnation is a requirement of constitutional magnitude where the actual taking of the property is not contemporaneous with payment therefor. Interest is thus regarded as part of the condemnee's constitutional right to just compensation." Wayne v. Cassatly, 137 N.J. Super. 464, 471 (App. Div. 1975). In making a determination on the appropriate interest rate,

> [t]he judge should consider the prevailing commercial interest rates, the prime rates of interest, and the legal rates of interest, and select the rate "which will best indemnify the condemnee for the loss of use of the compensation to which he has been entitled from the date on which the action for condemnation was instituted, less interest on all amounts previously deposited . . . ."
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> [Twp. of W. Windsor v. Nierenberg, 345 N.J. Super. 472, 478 (App. Div. 2001)(citing Cassatly, 137 N.J. Super. at 474).]

On appeal, "[g]iven our limited scope of appellate review and deference to the fact-finding role of the trial court, we cannot substitute our review of the record for that of the Law Division." Id. at 478. Given the clear statutory mandate and our deferential standard of review, we find no error with the judge's determination of the interest rate.

V.

The Halpers further argue that interest should accrue on the funds deposited with the court. After Piscataway deposited $8,547,000 with the court, it moved for stay of the Halpers' exercise of their statutory right to withdraw that deposit. The Supreme Court granted the stay, which prevented the Halpers from withdrawing the deposited monies for almost nine years. In June 2010, the Halpers filed a motion to distribute the deposit. The motion was denied a month later. In denying the Halpers' motion, the judge accepted the argument that "the [j]udgment shall not be paid until such time as the Supreme Court [] lifts or vacates the stay entered in this matter on May 5, 2006."

In Di Benedetto v. Estate of Di Benedetto, 219 N.J. Super. 440, 443-44 (App. Div. 1987), we held that a deposit in court by way of a bond does not stop the running of interest. However, in Harris v. Peridot Chemical (N.J.), Inc., 313 N.J. Super. 257, 300 (App. Div. 1998), we held that interest ceased running when a

defendant deposited the amount of award in court pending appeal, and did nothing to prevent the plaintiffs from obtaining the benefit of the judgment while the appeal was pending.

Here, we apply the Harris rationale as a matter of fundamental fairness. After depositing the funds with the court, Piscataway continuously moved to stay the withdrawal by the Halpers. While Piscataway's reasons for opposing the distribution were determined by the court to be meritorious, that is not dispositive of the issue of interest. As the Halpers argue, and we agree, the effect of Piscataway's success in obtaining stays of the distribution was to render the deposit of funds a nullity since the Halpers had no access to the funds. We therefore conclude that interest shall also accrue on the deposited funds until distribution to the Halpers at a rate of interest to be determined by the Law Division.

VI.

Finally, we conclude that Laurence Halper's arguments are barred by res judicata. Even if not barred, we further conclude that the arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed in part. Affirmed in part. We do not retain jurisdiction.