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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1781-20**

**JERSEY CITY
REDEVELOPMENT AGENCY,**

Plaintiff-Respondent,

v.

MLS REALTY, LLC,

Defendant-Appellant,

and

FIRST FIDELITY BANK, N.A.,

Defendant,

and

**CITY OF JERSEY CITY and
MOORING TAX ASSET GROUP,**

Defendants-Respondents.

Argued January 19, 2022 – Decided April 5, 2022

Before Judges Fisher and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3947-18.

Gregory J. Castano, Jr., argued the cause for appellant (Castano Quigley, LLC, attorneys; Gregory J. Castano, Jr., on the briefs).

Francis T. Jamison argued the cause for respondent Jersey City Redevelopment Agency (Archer & Greiner PC, attorneys; James M. Graziano and Francis T. Jamison, of counsel and on the brief).

Thomas J. Slattery, Assistant Corporation Counsel, argued the cause for respondent City of Jersey City (Peter Baker, Corporation Counsel, attorney; Thomas J. Slattery, on the brief).

PER CURIAM

Defendant, MLS Realty LLC (MLS), appeals the Law Division's order denying its motion to vacate a judgment of condemnation. MLS argues that the court erred in denying the motion, asserting that it improperly infringed upon MLS's constitutional right to just compensation. We do not reach the constitutional question, and we are satisfied that the trial court's order is supported by credible evidence in the record. We affirm for substantially the same reasons set forth by Assignment Judge Peter F. Bariso, Jr., in his thorough statement of reasons.

We add the following brief comments, incorporating by reference Judge Bariso's findings. Plaintiff, Jersey City Redevelopment Agency (JCRA), filed a

complaint and declaration of taking of defendant's property in October 2018. In January 2019 the trial court appointed three condemnation commissioners, who convened a hearing. After the hearing, the commissioners issued a report on May 22, 2019, establishing the subject property value at \$520,000. On June 27 the court entered a final order of disposition dismissing the matter because no appeal was filed within the twenty-day time limit.¹ Over a year later, on December 23, 2020, defendant moved to vacate the judgment of condemnation pursuant to Rule 4:50-1(f).

At the motion hearing, MLS argued for vacation of the condemnation order to protect its Fifth Amendment right to receive just compensation for the taking of its property. MLS contended that the \$520,000 value submitted by the JCRA did not reflect the property's "highest and best use" as required by the Supreme Court for the taking of private property. Klumpp v. Borough of Avalon, 202 N.J. 390, 405 (2010) ("[t]he New Jersey Constitution provides protections against governmental takings of private property without just

¹ Pursuant to Rule 4:73-6(a), "[a]n appeal from the report of the commissioners shall be taken by an appellant by filing a notice of appeal with the deputy clerk of the Superior Court in the county of venue within 20 days after the date of service upon him or her, by mail or otherwise, of a copy of the report; but the court for good cause shown may extend the time period for a period not exceeding 30 days."

compensation"); Hous. Auth. of City of New Brunswick v. Suydam Invs., LLC., 177 N.J. 2, 20 (2003) (highest and best use can be defined as "the most profitable" or "likely" use "at the time of the appraisal" or, alternatively, a "future utilization that produces the highest present land value" with the "probability of achievement" a prerequisite). However, MLS did not submit its own property appraisal with its motion. Instead, it submitted a certification from a company official, Ashraf Elshazly, purporting to value the property at \$5,000,000. MLS asserted blamelessness, alleging that former counsel failed to inform it of the commissioners' report and corresponding appeal deadline. MLS claimed it took immediate action when it learned of the status of the litigation. It also contended that Jersey City would not be prejudiced by granting the motion to vacate. The trial court found MLS did not show exceptional circumstances entitling it to relief under Rule 4:50-1(f). MLS now appeals, arguing abuse of discretion by the trial court.

The resolution of a Rule 4:50-1 motion "is left to the sound discretion of the trial judge, whose decision will not be disturbed absent a clear abuse of that discretion." Orner v. Liu, 419 N.J. Super. 431, 435 (App. Div. 2011) (citing U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)). Abuse of discretion exists "when a decision is 'made without a rational explanation,

inexplicably departed from established policies, or rested on an impermissible basis.'" Guillaume, 209 N.J. at 467 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

The essence of subsection (f) is to achieve equity and justice in "exceptional situations that cannot be easily categorized." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 269-70 (2009) (citations omitted). As such, a movant seeking relief under subsection (f) must satisfy the heavy burden of demonstrating truly exceptional circumstances. Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 289 (1994). Because of the importance attached to the finality of judgements, relief under Rule 4:50-1(f) is typically limited to situations where a "grave injustice would occur" were it not applied, and it is available "only when truly exceptional circumstances are present." Guillaume, 209 N.J. at 484 (citing Little, 135 N.J. at 286).

To determine if "truly exceptional circumstances" exist, courts consider: (1) the extent of the delay between dismissal of case and motion to reopen, (2) the underlying reason or cause, (3) the fault or blamelessness of the litigant, and (4) the prejudice, that would accrue to the other party. See Parker v. Marcus, 281 N.J. Super. 589, 593 (App. Div. 1995) (citing Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 195 (App. Div. 1985)).

The trial court considered the record and found MLS failed to meet its burden under Rule 4:50-1(f). Given the nearly eighteen-month delay between the final order and the motion to vacate, the court was not persuaded that MLS took "immediate action" once it learned of the commissioners' determination. The trial court also dismissed MLS's attempt to use the COVID-19 pandemic as a blanket reason for its failure to act or stay abreast of its case.

The trial court rejected MLS's "blamelessness" argument. The court distinguished the present case from Parker, in that the client in Parker was actively involved in the management of his case, was demonstrably misled by his attorney, and took timely action. The trial court noted that even if former counsel was unresponsive in its client communications, MLS had other means at its disposal to learn the status of the case, such as calling the courthouse, or researching the docket number of the case. Guided by our holding in Parker, – that courts "will not find a litigant 'blameless' where his 'dilemma [is] occasioned by his own dereliction or ambivalence'" – the trial court found that MLS's inaction was occasioned primarily by its own ambivalence.

Finally, the court considered the prejudice to Jersey City and determined that bearing the cost of "relitigating a year-old case so MLS [could] attempt to change a valuation that was ordered in May of 2019" would unfairly prejudice

Jersey City. The court found this was especially true where there was no "evidence [presented] that the valuation was incorrect or unjust." MLS's argument against the \$520,000 value was purely speculative, based entirely on the subjective view of one of its corporate officials that it "may be worth at least \$5,000,000."

Applying these principles, we find no abuse of discretion in the trial court's denial of MLS's motion to vacate pursuant to Rule 4:50-1.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION