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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1005-23**

STATE OF NEW JERSEY,
by the COMMISSIONER OF
TRANSPORTATION,

Plaintiff-Respondent,

v.

RUMSON COUNTRY CLUB,
a Corporation of the STATE OF
NEW JERSEY, a/k/a RUMSON
COUNTRY CLUB, INC.,

Defendant-Appellant,

and

1ST CONSTITUTION BANK, a NEW
JERSEY State Bank, STATE OF NEW
JERSEY, TIDELANDS RESOURCE
COUNCIL, a Public Body
Responsible for the Stewardship of
the State's Tidelands
(N.J.S.A. 12:3-12.1), STATE OF NEW
JERSEY, DEPARTMENT OF THE
TREASURY, and BOROUGH OF
RUMSON, in the COUNTY OF
MONMOUTH, a Municipal
Corporation of New Jersey,

Defendants.

Submitted May 21, 2024 – Decided May 30, 2024

Before Judges Enright and Whipple.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-0198-22.

Archer & Greiner, attorneys for appellant (James Michael Graziano, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; David Michael Kahler, Deputy Attorney General, on the brief).

PER CURIAM

In this eminent domain case, defendant Rumson Country Club (RCC) appeals from a provision of the February 7, 2023 order rejecting RCC's bad faith claims against plaintiff State of New Jersey, by the Commissioner of Transportation. RCC also challenges a December 4, 2023 order finding plaintiff "duly exercised its power of eminent domain" under the Eminent Domain Act (EDA), N.J.S.A. 20:3-1 to -50, as to a 37.7 acre parcel of land (Property) owned by RCC. Finally, RCC appeals from a separate December 4, 2023 order directing the appointment of commissioners to fix the compensation due RCC for plaintiff's authorized taking of the Property for public use. We affirm all

orders, substantially for the reasons set forth in the comprehensive written opinions of Judge Lourdes Lucas and the late Assignment Judge Lisa P. Thornton.

I.

Because we write for the parties, we need only summarize the procedural and factual history pertinent to this appeal. RCC owns and operates a golf club and other facilities in Rumson. In or around 1988, RCC agreed to grant plaintiff a three-year easement under which the New Jersey Department of Environmental Protection (DEP) was permitted to deposit dredged material from the Shrewsbury River into two confined disposal facilities (CDFs) located on the Property. In 1991, the parties extended the easement agreement for five years. RCC did not renew the agreement thereafter.

In or around 2014, the New Jersey Department of Transportation (DOT) asked RCC for permission to use the CDFs on the Property in connection with a project to dredge the Shrewsbury/Navesink Basin (SNB). Despite ongoing and often contentious discussions regarding the DOT's request, RCC and the DOT were unable to agree on whether the DOT should be able to resume using the CDFs for this project.

In July 2018, RCC sued the DEP, alleging RCC had been unable to use the Property for "club-related purposes" since 1996, and that the DEP failed to maintain the Property after depositing almost 600,000 cubic yards of dredged material there in the 1990s. RCC later amended its complaint, seeking to enjoin the DOT from exercising its power of eminent domain to take the Property. RCC also alleged "[t]he State of New Jersey, the [DEP], and the [DOT] . . . acted in bad faith with regard to condemnation activities related to [the P]roperty."

In 2020, while its case remained pending, RCC asked the DOT to consider alternatives to storing the dredged material on the Property. Although staff from the DOT met with RCC's representatives, and RCC retained experts to pursue such options, the DOT concluded none of RCC's recommended alternatives would serve the agency's long-term need to have a CDF available near the SNB for ongoing maintenance projects and emergent situations. However, the DOT informed RCC it would consider additional information if RCC could prove any of its proposed alternatives would serve the DOT's immediate and long-term needs.

In May 2020, the DEP and RCC entered into an agreement to resolve RCC's various claims against the agency. Under the agreement, the DEP released RCC from claims related to environmental remediation costs on the

Property and released ownership of all dredged material deposited onto the Property. Months later, RCC withdrew its complaint against the DOT without prejudice.

On July 15, 2021, the DOT sent an offer letter to RCC to purchase the Property for \$10,500,000. The letter stated, in part, "[t]he []DOT will not utilize its condemnation authority under the New Jersey [EDA] in the event that we do not reach a mutually acceptable agreement." RCC subsequently declined this offer.

On September 1, 2021, the DOT sent a revised offer letter to RCC, again proposing to buy the Property for \$10,500,000, but also advising RCC that the July 15 offer letter "erroneously stated . . . [the DOT's prior] offer was not being made pursuant to the [EDA], . . . and that the []DOT would not initiate condemnation proceedings if the RCC declined the []DOT's offer." Thus, the September 1 letter clarified the agency's position, stating that if the parties could not "arrive at an agreement for the voluntary sale of the [P]roperty through bona fide negotiations, the []DOT w[ould] acquire ownership of the [P]roperty in accordance with the EDA."

Two weeks after receiving the second offer letter, RCC initiated another lawsuit against the DOT, seeking to enjoin the agency's condemnation of the

Property. In January 2022, the DOT filed the condemnation action leading to this appeal, prompting Judge Thornton to issue an order to show cause requiring RCC to show why the court should not enter judgment in plaintiff's favor and declare the DOT had duly exercised its power of eminent domain.

The following month, RCC voluntarily withdrew its existing complaint without prejudice. In March 2022, RCC filed an answer and a motion to dismiss plaintiff's complaint, alleging the DOT negotiated with RCC in bad faith and arbitrarily selected the Property, instead of considering other viable sites where dredged material could be stored.

On the return date of the order to show cause, Judge Thornton found RCC failed to establish a prima facie case of bad faith, explaining "no evidence was offered [by RCC] that the purpose of [plaintiff's] taking was anything other than a valid public purpose," i.e., "dredging the SNB." She also dismissed those portions of plaintiff's complaint seeking to hold RCC responsible for remediation costs on the Property, finding plaintiff previously agreed to hold RCC harmless for such costs. Finally, because Judge Thornton found RCC demonstrated a prima facie case of arbitrariness, considering "plaintiff initially agreed not to pursue eminent domain, . . . and subsequently changed course,"

she ordered a plenary hearing to address whether the DOT's decision to condemn the Property was arbitrary and capricious.

Judge Thornton held the plenary hearing on May 8 and 9, 2023. Multiple witnesses testified at the hearing, including Genevieve Clifton, a Manager at the DOT who oversaw the work of the DOT's Office of Maritime Resources (OMR). Clifton explained the OMR was charged with various responsibilities, including dredging maritime channels. She also testified the SNB was significantly damaged during Hurricane Sandy, so the DOT needed to dredge nineteen of the SNB's twenty-six state-managed channels. Clifton stated the DOT proposed to begin dredging as soon as possible because the Federal Emergency Management Agency (FEMA) would only provide funding for the project through 2024.

Additionally, Clifton explained ongoing access to the Property for dredging would enable the DOT to address future emergencies and perform regular channel maintenance. She also testified RCC's "beneficial use proposals" were "one-off" opportunities that did not provide a location for future material placement. Accordingly, she concluded that "[n]o matter what one-off beneficial use [the DOT chose, it] would still need [RCC's] CDF[s]."

In rejecting RCC's proposed alternatives, Clifton testified it would take approximately five months for "a CDF project [to be] permitted", whereas "a

difficult beneficial use project c[ould] easily take two years." Further, she stated that when the DOT asked RCC for a more detailed analysis of its proposed alternatives, she "got nothing back" in response.

The DOT's Commissioner, Diane Gutierrez-Scaccetti, also testified at the hearing. She explained the SNB channels had not been dredged in decades, and dredging now was necessary. The Commissioner further stated the DOT was unable to find a location other than the Property that would meet the permitting requirements of the DEP or the United States Army Corps of Engineers. Additionally, the Commissioner explained that the first offer letter to RCC in July 2021 erroneously failed to state plaintiff would pursue condemnation of the property if the agency's offer was rejected.

RCC called Mark Gallagher, an environmental consultant, to testify. Gallagher discussed the various alternatives RCC had recommended to the DOT to avoid the agency's taking of the Property. Gallagher acknowledged DOT staff previously met with RCC representatives and had "asked for further information regarding [RCC's] proposals." He also stated the DOT "wanted full engineering plans, which just was[not] going to happen."

The plenary hearing concluded on May 9, 2023. Regrettably, Judge Thornton passed away eighteen days later. Because she died without rendering

a final decision, the parties agreed to have Judge Lucas decide the matter based on the existing record. According to Judge Lucas, the parties also "agreed there were no credibility issues before the court."

On December 4, 2023, Judge Lucas entered an order granting final judgment to plaintiff, finding "the State of New Jersey [wa]s authorized to[,] and ha[d] duly exercised its power of eminent domain as to the [P]roperty and rights described and depicted in [its v]erified [c]omplaint." In a corollary order entered on December 4, 2023, another judge "appointed commissioners to examine the [Property] . . . for public use for [DOT] purposes[,] . . . and to fix the compensation to be paid for the rights and interests acquired under [plaintiff's 2022] Declaration of Taking."

In the sixty-two-page opinion accompanying Judge Lucas's order, she painstakingly reviewed the testimony elicited at trial. Rather than reiterate the judge's findings as to the witnesses' testimonies, we highlight her legal conclusions based on those testimonies.

First, the judge found "[t]he sole issue before the court [wa]s whether the State's decision to condemn the . . . [P]roperty was arbitrary and capricious as a result of the State's failure to reasonably consider alternatives to condemnation[,] in violation of its obligations under the [EDA]." Before

addressing the arbitrariness issue, Judge Lucas acknowledged that "in its closing brief," RCC "renew[ed] its claim of bad faith" against plaintiff. The judge found this claim was "not properly raised as a trial issue" because when the plenary hearing concluded, RCC "did not . . . move to renew [its] bad faith claim" against plaintiff, nor "move the court to reconsider its prior order." Judge Lucas further noted Judge Thornton did not "reconsider her order sua sponte, either at the time or at the conclusion of the hearing after all evidence was presented."

Turning to the issue of arbitrariness, the judge concluded that because Judge Thornton previously "determined . . . [RCC] established a prima facie case of arbitrariness," "[p]laintiff [wa]s . . . required to prove . . . the condemnation [of the Property wa]s reasonable and necessary." The judge found "[t]he State's uncontested immediate need [wa]s the placement of dredged material related to the repair of channels in the SNB[,] due to damage by [Hurricane] Sandy," and "[i]ts long-term need [wa]s the provision of dredge material placement opportunities in the SNB area for emergencies and regular channel maintenance as part of the State's infrastructure." The judge explained that "[t]he SNB was identified as one of seven gap areas where there [wa]s no dredge material placement options such as a CDF or a viable beneficial use project."

Next, Judge Lucas credited Clifton's testimony that "each of [RCC's] proposed alternatives would be a one-time use and would not provide sufficient capacity for the immediate dredging needs" and "would also not be sufficient to provide for the regular channel maintenance and future emergencies." Further, the judge accepted Clifton's testimony that "even if the alternatives proposed by [RCC] were viable[, the State] would still require the . . . CDF[s on the Property]" because "CDFs . . . are essential for the State's infrastructure." The judge found Clifton's testimony was "consistent with the stated purpose and need for the condemnation to provide a placement opportunity for the immediate dredging needs[,] and as part of the overall infrastructure providing for future emergencies and regular maintenance."

Additionally, the judge found "RCC's alternatives were too small[,] given the amount of material that DOT need[ed] to immediately remove from the SNB." Moreover, the judge concluded "[t]he fact plaintiff . . . ha[d] actively promoted, participated[in,] and executed multiple beneficial use projects[,] . . . including those consulted by [RCC,] militate[d] against a finding of capricious intent in discarding [RCC's] potentially viable beneficial use alternatives in this case."

The judge also declined to find plaintiff acted arbitrarily by sending RCC two offer letters, "one which provided for condemnation and one that did not." The judge reasoned: both letters offered to purchase the Property based on the same appraised value; "the template used for the July 15, 2021 offer letter was [only] used on three prior occasions for OMR projects," based on "OMR's limited funding resources"; two of the State's witnesses "testified that the standard template used to extend acquisition offers include[d] notice of condemnation"; three of the State's witnesses testified it "was not the normal customary practice" to issue an offer letter without such a notice; and one of the State's witnesses stated he was "instructed to send the September 1, 2021 offer letter correcting the error" in the July 15 letter, so that the notice of condemnation was included in the latter letter. Therefore, the judge stated, "to take the above chain of events as evidence of the existence of alternatives sufficient to support a claim of arbitrariness is a leap the facts do not warrant."

Similarly, the judge rejected RCC's claim that "plaintiff's efforts to condemn the . . . Property amount[ed] to impermissible land banking." The judge noted RCC did not dispute plaintiff's "need to dredge the SNB channels. . . . [n]or . . . the need to maintain the channels in a safe navigable

condition that require[d] not only periodic dredging for maintenance purposes but also for emergencies."

Given these conclusions, Judge Lucas stated she "d[id] not find that plaintiff's decision to proceed to condemnation was arbitrary or capricious." Instead, she found plaintiff "show[ed] that its decision to condemn the . . . [P]roperty, after reasonably considering alternatives, [wa]s necessary to meet its established need."

On February 8, 2024, Judge Lucas granted RCC's motion to stay the February 7, and December 4, 2023 orders pending appeal. That same month, the DOT moved before us to dissolve the stay, or alternatively, accelerate the appeal. In March 2024, we entered an order denying the DOT's motion to dissolve the stay but granting the agency's request to accelerate the appeal.

II.

On appeal, RCC argues the State: (1) "was required to consider alternatives to condemning the Property before filing for eminent domain"; (2) "did not actually reasonably consider alternatives to condemning" the Property; (3) "never intended to consider alternatives as it already had decided to condemn the Property no matter what"; (4) "failed to give any real, concrete, data[-]driven consideration to any of [RCC's] beneficial reuse proposals"; (5) "never

evaluated [RCC's proposal to have the State use] . . . Liberty Island Park [as an] alternative [to the Property] and thus[,] its rejection of the alternative was arbitrary"; and (6) failed to "evaluate the possibility of disposing of dredge on nearby Great Sedge Island"; (7) did not "compl[y] with its duties as a condemnor in its eminent domain proceedings"; (8) "did not act in good faith or turn square corners at all times"; (9) "acted in bad faith in unduly influencing the valuation of the Property"; and (10) "attempt[ed] to engage in improper land banking of the [P]roperty."

RCC also contends the trial court mistakenly: found "the State had complied with its duties as a condemnor"; "reversed its position regarding the State's obligation to inform RCC if it was going to condemn the Property or not consider alternatives"; and failed to "revisit[] the issues related to the offer letters."

Our scope of review of a trial court's findings following a bench trial is limited. "The general rule is that [factual] findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). Thus, we will not disturb the factual findings of the trial judge unless we are "convinced . . . they are so manifestly

unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Our review of a trial court's legal conclusions, however, is de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

Applying these standards, we find no merit in RCC's arguments and affirm, substantially for the reasons set forth in the well-reasoned opinions of Judges Thorton and Lucas. R. 2:11-3(e)(1)(E). We add the following comments.

"Eminent domain is the power of the State to take private property for public use" and "is a right founded on the law of necessity[,] which is inherent in sovereignty and essential to the existence of government." Twp. of W. Orange v. 769 Assocs., LLC, 172 N.J. 564, 571 (2002) (quoting State v. Lanza, 27 N.J. 516, 529 (1958)).

[T]hree constitutional limitations circumscribe the State's eminent domain powers under the New Jersey Constitution:

First, the State must pay "just compensation" for property taken by

eminent domain. Second, no person may be deprived of property without due process of the law. Third, . . . the State may take private property only for a "public use."

[Borough of Glassboro v. Grossman, 457 N.J. Super. 416, 427-28 (App. Div. 2019) (omission in original) (internal citations omitted) (quoting Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344, 356 (2007)).]

Generally, "condemning authorities" are "granted wide latitude . . . in determining what property may be condemned for 'public use.'" 769 Assocs. LLC, 172 N.J. at 572. In fact, "the quantity of land to be taken[,] as well as the location[,] is a matter within the discretion of the condemnor," but "when private property is condemned[,] the taking must be limited to the reasonable necessities of the case, so far as the owners of the property taken are concerned." Texas E. Transmission Corp. v. Wildlife Pres., Inc., 48 N.J. 261, 269 (1996).

"The exercise of th[e condemnor's] discretion will not be interfered with by the courts in the absence of fraud, bad faith[,] or circumstances revealing arbitrary or capricious action." Ibid. (citing City of Trenton v. Lenzner, 16 N.J. 465, 473 (1954)). A party alleging the State has acted in bad faith or arbitrarily must establish such assertions "by clear and convincing evidence." Twsp. of Readington v. Solberg Aviation Co., 409 N.J. Super. 282, 311 (App. Div. 2009);

see also Texas E. Transmission Corp., 48 N.J. at 275 ("the ultimate burden of proving arbitrariness . . . will be on [the party challenging the State action]" but once "[a] prima facie case of arbitrariness [is] . . . made out," "the burden of going forward with the evidence will shift to plaintiff.")

Considering the well-supported factual findings set forth in Judge Thornton's and Judge Lucas's written opinions, we are convinced Judge Lucas correctly concluded plaintiff's taking was not arbitrary or capricious, and instead was reasonable and necessary for the reasons outlined in Judge Lucas's opinion. As Judge Lucas rightly noted, "[t]he DOT is charged with the management and placement of dredging material[,] as well as the creation of regional CDFs." Thus, to fulfill its responsibility, the DOT sought "to acquire the [Property] for its immediate need, the disposal of dredge material from the SNB as part of its [Hurricane] Sandy repairs, and[] its general need[,] to establish regional CDFs as part of its infrastructure to provide dredge material placement for future emergency response and regular maintenance." Moreover, the record reflects plaintiff engaged in bona fide negotiations with RCC before pursuing condemnation. See N.J.S.A. 20:3-6. Accordingly, we have no reason to second-guess Judge Lucas's determination that "after reasonably considering


alternatives," plaintiff demonstrated "its decision to condemn the . . . [P]roperty . . . [wa]s necessary to meet its established need."

Therefore, we affirm each challenged order for the reasons set forth in Judge Thornton's and Judge Lucas's thorough and thoughtful opinions. We also lift the stay imposed under Judge Lucas's February 8, 2024 order.

All other contentions raised by RCC lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION