

City of Nashua

v.

**Norman P. Parslow, Harriette E. Parslow, Alan J. Harris,
Susan G. Harris and City of Nashua**

Docket No.: 26653-13ED

ORDER

The board has received and reviewed additional pleadings submitted in response to the August 2, 2013 Order. That Order addressed the “Condemnor’s” July 3, 2013 Motion for Condemnees to Vacate Condemned Property (“Motion”) and the July 10, 2013 “Objection” to the Motion filed by two named “condemnees” (Norman P. and Harriette E. Parslow). The board finds the Objection is without merit and the board grants the Motion for the following reasons.

The Parslows’ Objection to the Motion claims the board has “no jurisdiction over Gate City Tire, Inc. [‘Gate City’],” a corporation occupying the “Property” that is the subject of this complete, fee simple taking. (The Property is commonly known as 73-75 Broad Street, further described in the Declaration of Taking filed with the board on February 27, 2013). The Objection argues Gate City is “not part of the condemnation process,” but this argument has no relevance to the issues presented by the Motion.

The Condemnor’s right to possession of the Property arose when it filed the Declaration of Taking. See RSA 498-A:11, I. The Condemnor was not required to name Gate City as a condemnee because, as the Parslows concede, Gate City is a corporation owned by them and

occupies the Property with “no written lease,” but simply based on “an informal arrangement” with the Parslows, who are named condemnees. (See the Parslows’ “Response” filed with the board on August 6, 2013.) The Condemnor therefore had no obligation to serve them with the Declaration of Taking or to name them as additional condemnees under the eminent domain statute. (See RSA 498-A:3, II.)

Under RSA 498-A:11, the board has broad authority to provide redress when anyone “is preventing or obstructing the [C]ondemnor from entering upon or taking possession of the [P]roperty after the [C]ondemnor is entitled to do so.” The Condemnor was entitled to do so after it filed the Declaration of Taking on February 27, 2013 upon deposit with the board of the amount of just compensation. The Parslows could have filed preliminary objections under RSA 498-A:9-a, if there had been a basis for doing so. In the March 19, 2013 letter to the board from their attorney, the Parslows expressly stated they would not do so and demanded the board pay over the sum deposited for the taking (\$335,000) at that time. The board issued a check payable to all the condemnees on March 26, 2013. Under RSA 498-A:11, III, “A condemnee who withdraws the sum deposited. . . shall be deemed to have waived all objections and defenses to the action and to the taking of his property except for any greater claim to compensation.”

The documents presented to the board include an Eviction Notice the City issued to the Parslows (“d/b/a Gate City Tire”) on July 3, 2013 pursuant to RSA 540:2 which gave them until “August 5, 2013” to vacate the Property. RSA ch. 540, as stated in the title, governs “Actions Against Tenants.” Gate City is not a “tenant” of the Condemnor and the Condemnor’s right to take possession of the Property is governed by the Eminent Domain Procedure Act (RSA ch. 498-A).

Under RSA ch. 498-A, the board, upon filing of the Declaration of Taking and deposit of damages, has the jurisdiction and authority to prevent the wrongful continued occupancy of the Property by Gate City, the Parslows' corporation. RSA 498-A:11, I further authorizes the board "to grant such rights as it may think necessary" and to "proceed for contempt" if any person is "preventing or obstructing" the Condemnor "from entering upon or taking possession" of the Property.

For all of these reasons, the Condemnor is entitled to the remedies it seeks in the Motion. The board therefore finds the Condemnor is entitled to immediate possession of the Property and orders the Parslow condemnees (and anyone acting under their authority or control, including Gate City) to vacate and cease to enter the Property. Noncompliance with this Order within twenty (20) days of the date shown below shall result in further proceedings for contempt and, if necessary, an order for enforcement to the superior court pursuant to RSA 71-B:13 (Enforcement of Decisions).

SO ORDERED

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

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CERTIFICATION

I hereby certify copies of the foregoing Order have been mailed this date, postage prepaid, to: Kevin H. O'Neill, Esq., State of New Hampshire, Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the City of Nashua, Condemnor; William H. Barry, Esq., Barry & Honorow, PLLC, 161 Kinsley Street, Nashua, NH 03060, counsel for Norman P. and Harriette E. Parslow, Condemnees; Alan J. and Susan G. Harris, 6526 South Kanner Highway, #336, Stuart, FL 34997, Mortgagee; and Stephen M. Bennett, Esq., Office of Corporate Counsel, City of Nashua, P.O. Box 2019, Nashua, NH 03061, counsel for the City of Nashua, Municipal Tax Lien, Condemnee.

Dated: 8-15-13

Melanie J. Ekstrom, Deputy Clerk