

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

GEORGIA TRANSMISSION
CORPORATION (AN ELECTRIC
MEMBERSHIP CORPORATION),

Petitioner,

v.

CIVIL ACTION FILE NO. 08-A-7510-1

CERTAIN PARCELS OF LAND
DESCRIBED AS FOLLOWS:

18.964 ACRES OF LAND, GMD 1587,
GWINNETT COUNTY, GEORGIA,

THE BICKER FAMILY INVESTMENTS,
LP a/k/a BICKERS FAMILY
INVESTMENTS, LLLP

WALTER J. CLARKE, II, JUDGE
PROBATE COURT,
GWINNETT COUNTY, GEORGIA

and

TO ANY AND ALL PERSONS HAVING
OR CLAIMING ANY RIGHT OR
INTEREST IN AND TO SAID PARCEL
OF LAND,

Respondents.

ORDER

The Court entered an Order appointing Luther Beck as the Special Master in the above styled matter on August 29, 2008. The Special Master hearing was conducted on October 8th, October 29th, October 30th, and November 4th, 2008. Special Master Award was filed with the Clerk's Office on

November 10, 2008. After having heard testimony and evidence, viewed the subject property and considered argument from counsel for the Condemnor and Condemnee, the Special Master Luther Beck awarded the Condemnee \$2,788,218.00. Further, the Special Master concluded that GTC's actions in negotiating with the Bickers Family Investments did not constitute bad faith as the standard is applied under existing Georgia law. Because the Court finds that the Condemnor did not negotiate in good faith with the property owner, The Bickers Family Investments, LP, the condemnation is hereby SET ASIDE, with costs to be paid by the Condemnor. In that regard, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Georgia Transmission Corporation (hereinafter the "Condemnor") filed a Special Master Petition on August 18, 2008. The Condemnor condemned 18.964 acres of easement for an electric transmission right-of-way and associated powers and uses across what was determined to be four parcels of the Condemnee's land. The condemned easements cross the western and southern boundaries of the Condemnee's property, with the exception of one portion where the easement bisects a portion of the eastern property and runs along the frontage of the remaining land.

Negotiations with the Bickers Family Investments, LP (hereinafter the "Condemnee") began, at the latest, in January 2008. As required by Georgia law, the Condemnor made a series of written offers to acquire the necessary easements; it also provided documents to the Condemnee describing what rights the Condemnor was seeking and drawings showing the location of the easements on the Condemnee's land. O.C.G.A. §22-3-161(b), the statute at issue, also provides that the Condemnor "shall attempt in good faith to negotiate a settlement with each property owner from whom the utility needs to acquire property rights for the line." The parties failed to reach a settlement concerning the

easement; thereafter, GTC filed a condemnation petition requesting the appointment of a Special Master. There were two issues to be determined by the Special Master: (1) whether the Condemnor attempted in good faith to negotiate a settlement with The Bickers Family Investment, LP, and (2) the just and adequate compensation for the rights acquired by the condemnation.

The Condemnee alleges a number of specific instances of conduct by the Condemnor as examples of not negotiating in good faith. Having reviewed the transcript of the Special Master hearing and the Special Master Award, the Court accepts many of the findings of fact made by the Special Master. There were several instances alleged by the Condemnee of bad faith behavior by the Condemnor which were uncontested during the hearing, including the following:

A. Condemnor Utilized and Negotiated with Outdated FEMA Flood Plain Information.

During the Special Master hearing, there was no question that the Condemnor provided documents to the Condemnee which included outdated flood plain data. After the Condemnee's representative realized the inaccuracy of the flood plain data, he immediately advised the Condemnor's representative and even obtained and forwarded to the Condemnor the correct information. Despite the Condemnee's efforts, the Condemnor continued to utilize the inaccurate flood plain data, making offers on said incorrect data and even including the inaccurate plats regarding the flood plain with the petition.

B. Condemnor Failed to Provide the Condemnee with its Appraisals.

The Condemnor decided not to share any of the four appraisal reports commissioned for Condemnee's property, despite repeated requests by the Condemnee's representative.

C. Condemnor Failed to Provide Condemnee with All of the Comparable Sales Information From its Appraisals.

Condemnee's representative requested all the comparable sales information from the appraisal reports after he was informed that he could not have the entire appraisal reports. Condemnee provided some, but not all, of the comparables relied upon by the appraisers. Upon being questioned by the Condemnee's representative, the Condemnor's representative admitted that the comparables he provided were not all those relied upon by the appraisers, but were those relied upon by the Condemnee to make its offer.

D. Condemnor's Representative Altered the List of Comparable Sales.

The Condemnor's representative compiled a list of certain comparable sales used by the commissioned appraisers and forwarded it to the Condemnee's representative. The process of his compilation involved eliminating two sales he deemed not to be comparable and adding two sales not actually considered by the appraisers, but which he deemed to be comparable. The sales unilaterally deemed not comparable were the highest value sales, while the two added sales were among the lowest value sales.

E. Condemnor Negotiated For Property Rights Beyond Those it Could Acquire Through Condemnation.

The Condemnor provided the Condemnee with a copy of the proposed easement, which contained rights greater than those rights allowed under current Georgia condemnation law.

In addition to the above instances, which were not contested, the Condemnee alleged a number of contested factual allegations which manifested bad faith by the Condemnor. (1) The Condemnee's property has access to sewer. Throughout the negotiation process, the Condemnor

maintained that sewer access was not fully accomplished; therefore, the comparable sales used were tailored to that conclusion. (2) Because the Condemnee's representative had some training in real estate appraisals, he questioned the use of certain comparables in determining the value of the property at issue. Despite the Condemnee's objections to their use, the Condemnor continued to use the same comparables in its negotiations with the Condemnee. (3) One of the Condemnor's appraisals was commissioned pursuant to a written agreement which specifically limited consideration of certain potential impacts of the power line easement to the remainder of the Condemnee's property. Condemnee maintained this limitation was the result of Condemnor's instruction and, as a result, practically eliminated the consideration of consequential damages. (4) The Condemnor rerouted the power line from an earlier path at the Condemnee's request. The Condemnor threatened to return the route to its original position unless Condemnee reached a pre-condemnation settlement as to just and adequate compensation for the easement sought.

CONCLUSIONS OF LAW

The controlling issue in this case is whether the Condemnor attempted in "good faith" to negotiate a settlement with the Condemnee. The statute itself, O.C.G.A. §22-3-161(b), fails to provide any definition of what "good faith" is in condemnation proceedings concerning a public utility's exercise of eminent domain. However, a review of eminent domain jurisprudence does provide examples of what "bad faith" is. Bad faith has been sharply distinguished from negligence or bad judgment, in that it "contemplates a state of mind affirmatively operating with furtive design or some motive of interest or ill will," and has been "equated with conscious wrongdoing motivated by improper interest or by ill will." Brannen et al. v. Bulloch County, 193 Ga. App. 151 (1989), citing Vickers v. Motte, 109 Ga. App. 615 (1964) and City of Atlanta v. First Nat. Bank, 246 Ga. 424

(1980). While the Court finds the definition of bad faith helpful, said analysis is not controlling in the matter pending before the Court. The Court notes that the Georgia legislature could have chosen to pattern the language in O.C.G.A. §22-3-161(b) after the bad faith language in O.C.G.A. §32-3-11. However, the Georgia legislature chose not to do so. Instead, the Georgia legislature, by and through the code section, specifically directs that the Condemnor negotiate in “good faith” with the landowners. The Court agrees with the Condemnee in that the positive obligation to negotiate in good faith as required by O.C.G.A. §22-3-161 goes far beyond merely avoiding outright fraud.

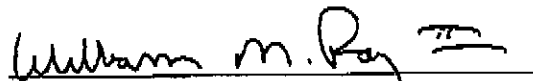
The question then becomes what is “good faith” and what did the Georgia legislature intend when it used “good faith” as the measuring stick concerning negotiations between public utilities and homeowners in condemnation matters. The Court looks to the very basic definition of “good faith” for guidance. “Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage....” Black’s Law Dictionary, Sixth Ed., page 693. The Court finds that this definition is the appropriate measure of what “good faith” means under O.C.G.A. §22-2-161(b).

Application of this basic principle of “good faith” in this case shows that GTC’s condemnation in the matter before this Court must be set aside. The Court finds Mr. Bicker’s testimony credible. Threatening to move the power line back to the original location if the landowner failed to negotiate a just and adequate compensation amount to the Condemnor’s liking is in and of itself not negotiating in good faith and nothing more than an attempt on the Condemnor’s part to seek an unconscionable advantage and to “bully” the Condemnee. The Court agrees that GTC sought at every opportunity to gain an unfair negotiating advantage over the Bickers family by

misrepresenting facts affecting land value, including the availability of sewer and the size of the flood plain on the Bickers property. Furthermore, the Condemnor attempted to mislead the Condemnee concerning the appraisals by substituting in two lower valued sales not considered by the appraisers for two higher valued sales which were used by the appraisers.

Accordingly, the condemnation in the above styled matter is hereby SET ASIDE, with all costs to be taxed against GTC.

SO ORDERED this 24 day of March, 2009.


WILLIAM M. RAY, II
Judge, Superior Court of Gwinnett County

cc

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