

SUPERIOR COURT OF NEW JERSEY  
SOMERSET, HUNTERDON & WARREN COUNTIES  
VICINAGE 13

YOLANDA CICCONE  
ASSIGNMENT JUDGE



SOMERSET COUNTY COURT HOUSE  
P.O. BOX 3000  
SOMERVILLE, NEW JERSEY 08876  
(908) 231-7069

January 4, 2017

Mr. Laurence B. Orloff, Esq.  
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101 Eisenhower Parkway, Suite 400  
Roseland, NJ 07068

Mr. Richard P. Cushing, Esq.  
Gebhardt & Kiefer  
P.O. Box 4001  
Clinton, NJ 08809

RE: Solberg Aviation v Township of Readington  
Docket No.: HNT-L-435-07

Dear Counsel,

This letter represents this Court's explanation of its January 4, 2017, Order, which grants Plaintiff's motion for fees. The motion, and oral argument that followed, did not address the reasonableness of fees requested – rather whether or not fees could be awarded. Please serve a copy of this letter upon all parties within seven (7) days of receipt.

The facts in this matter are voluminous, and well-articulated in Plaintiff's moving papers. The dispute between the parties before this Court does not revolve around facts; rather, parties disagree about whether the undisputed facts necessitate a divergence from the American Rule, which stands for the proposition that each party bears their own litigation costs, absent statutory or Court Rule that permits otherwise. See Occhifinto v. Olivo Constr. Co. LLC, 221 N.J. 443 (2015).

Plaintiff argues fees are deserved pursuant to N.J.S.A. 20:3-26(b), which awards a successful condemnee the "sum as will reimburse such owner for his reasonable costs, disbursements and expenses actually incurred[.]" "Actually incurred" is understood to mean that fees came as a "direct result of the public entity's exercise of its condemnation power." Township of West Orange v. 769

Associates, LLC, 198 N.J. 520, 544 (2009). Defendant disagrees, and argues that New Jersey's recognition of the American Rule means that fees should only be awarded in the most limited of circumstances. Both parties allege the other lacks legal authority to make its respective argument.

R. 1:36-3 states that "[n]o unpublished opinion shall constitute precedent or be binding upon any court[.]" Accordingly, this Court is left with utilizing the only reported case cited by the parties for the proposition that fees should, or should not, be awarded – Township of West Orange v. 769 Associates.

There, the Supreme Court affirmed that litigants could only be awarded fees "incurred a direct result" of the condemnation action. 198 N.J. at 544. Similar to this matter, the plaintiff in West Orange sought fees, at the trial level, for a prerogative writ action that was collateral to a condemnation action. At the Appellate Division, the court held that the action in lieu of prerogative writs was "ancillary to the condemnation action," and therefore "not within the scope of the reimbursement provisions of N.J.S.A. 20:3-26(b)." Township of West Orange v. 769 Associates, LLC, 397 N.J. Super. 244, 247 (App. Div. 2007). At the Supreme Court, the plaintiff "concede[d] that the fees for the prerogative writs action... were not recoverable as they were collateral and not directly related to" the condemnation action. 198 N.J. at 544-45.

This Court finds that whether or not a prerogative writs action is "directly related to" a condemnation action, for the purposes of fee-shifting, is a fact-sensitive endeavor. Were that not the case, the Supreme Court would have more clearly excluded such fees, and there would not be a progeny of unpublished cases coming to different conclusions on this issue.

That being the case, this Court finds that Judge Miller's decision in this matter is dispositive regarding the relatedness issue. While Judge Miller was not tasked with determining whether Plaintiff's prerogative writs action was directly related to the condemnation action for the purposes of fee-shifting, Judge Miller's detailed analysis of the facts of this matter illuminate only one conclusion – that the prerogative writs action, and the fees Plaintiff accrued as a result, were directly related to the condemnation action.

Judge Miller ultimately concluded that the Ordinance at the heart of the prerogative writs action was "an adjunct" to Defendant's "eminent domain scheme." Judge Miller's Opinion, September 22, 2016, page 83. In fact, Judge Miller concluded that the Ordinance had no other purpose than to obtain the remaining 102 acres that was unclaimed after Defendant's taking. Id. at 126. Judge Miller agreed with Judge Armstrong's finding that Defendant had "pre-textual purposes" for enacting the Ordinance. Id. at 129.

The facts before this Court, which are undisputed by all parties, clearly demonstrate that the Ordinance was enacted specifically for the purposes of obtaining remaining acreage that Defendant's condemnation action could not claim. Indeed, for all purposes besides docket number, these two matters are one in the same. This Court finds, then, that Plaintiff's fees are recoverable

pursuant to N.J.S.A. 20:3-26(b). This finding is consistent with Special Master Thomas F. Quinn's recognition that the law "could support a fee award if [Plaintiff] overturned the ordinance, establishing that the ordinance was the 'direct result of the public entity's formal action targeting [the condemnee's] property for condemnation.'" Special Master's Recommendation, December 9, 2015, page 13.

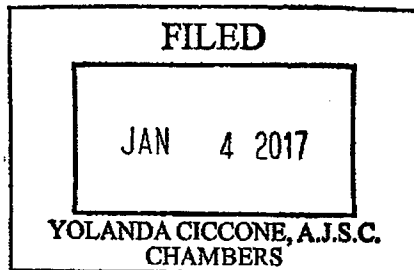
For the reasons stated above, Plaintiff's motion for fees is granted.

Moreover, this Court recognizes Special Master Quinn's familiarity with these matters, memorialized by his findings becoming Court Order on January 22, 2016, in the Condemnation matter (HNT-L-468-06). Accordingly, this Court submits the issue of the reasonableness of Plaintiff's fees to Special Master Quinn for consideration and a corresponding report.

Very Truly Yours

  
HON. YOLANDA CICCONE, A.J.S.C.

Laurence B. Orloff, Esq. - # 196601960  
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& SIEGEL, P.A.  
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(973) 622-6200  
Attorneys for Plaintiff Solberg Aviation Company



SOLBERG AVIATION COMPANY, a  
partnership,

Plaintiff,

v.

TOWNSHIP OF READINGTON, a  
municipal corporation,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUNTERDON COUNTY

DOCKET NO. HNT-L-435-07

ORDER

**GRANTED**

This matter having been opened to the Court on December 6, 2016, the continued return date of the motion by Solberg Aviation Company dated October 25, 2016, for counsel fees and related relief, and the Court having read and considered the moving, answering, reply, and supplemental papers, and having heard the arguments of counsel, and good cause appearing,

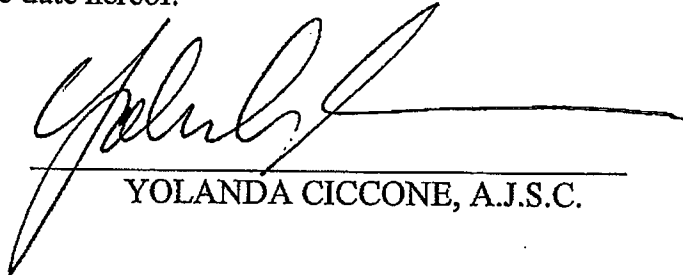
IT IS on this 4 day of January, 2017,

ORDERED as follows:

1. That the motion of Solberg Aviation Company for legal fees and disbursements/expenses incurred in the proceedings entitled Solberg Aviation Company v. Township of Readington, Docket No. HNT-L-435-07, is hereby granted.

~~2. That the amount of such legal fees and disbursements awarded to Solberg Aviation Company pursuant to Paragraph 1, if not otherwise resolved between the parties, shall be heard and determined by the Court on January \_\_\_\_, 2017, at \_\_\_\_ A.M.~~  
*See attached order and letter.*

3. That a true copy of the within Order shall be served upon all counsel within 7 days of the date hereof.

  
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YOLANDA CICCONE, A.J.S.C.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
20 NORTH BRIDGE STREET  
POST OFFICE BOX 3000  
SOMERVILLE, NEW JERSEY 08876

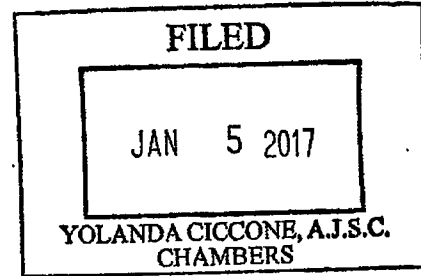
Solberg Aviation,

Plaintiff,

v.

Township of Readington,

Defendant.



SUPERIOR COURT OF NEW JERSEY  
SOMERSET COUNTY  
LAW DIVISION

DOCKET NO. HNT-L-435-07

ORDER FOR APPOINTMENT OF  
A SPECIAL MASTER

**GRANTED**

THIS MATTER, having been opened on the Court's own motion according to R. 4:41-1, and it appearing that this is a complex case justifying the need for extraordinary measures to expedite this matter;

IT IS on this 5th day of JANUARY, 2017, ORDERED that:

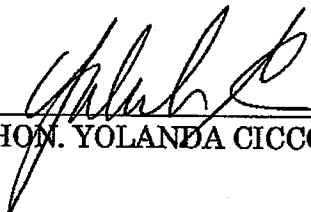
Thomas F. Quinn, Esq. be appointed to serve as Special Master upon order of the Court. The Special Master's services will be compensated by the parties equally at \$400 per hour.

The Special Master will have the authority to recommend a quantum of attorneys' fees to be awarded to the Plaintiff.

**Appeal from Recommendations.**

1. **Time Requirements:** The parties have ten business days to appeal to the Court from a recommendation of the Special Master. Any appeal must be filed with the Court by motion within the ten-day time period. The same filing fees, service requirements, and standards for legal motions apply to these appellate motions.
2. **Effect of Appeal Status on Recommendation:** Absent a timely appeal from the Special Master's recommendation, the recommendation will have the same force and effect as a court order. If there is an appeal, the recommendation will be stayed pending the final determination of that appeal.

3. Standard of Review: Where the issue involves discretionary decisions by the Special Master, the Court will not interfere unless enforcement of the Special Master's decision will result in manifest unfairness. As to all other recommendations, the conclusion or findings of the Special Master will not be disturbed unless they are inconsistent with, or unsupported by, the factual or legal theories proffered.



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HON. YOLANDA CICCONE, A.J.S.C.