

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE STATE BOARD OF PROPERTY**

Steven Gidumal and Virtus Capital	:	
Advisors, LLC,	:	
Petitioners	:	
vs.	:	Docket No. BP 2022-0002
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Respondent	:	

FINAL MEMORANDUM ORDER DISMISSING MATTER AS MOOT

On February 22, 2022, Steven Gidumal and Virtus Capital Advisors, LLC (Petitioners) filed a petition to quiet title against the Commonwealth of Pennsylvania, Department of Transportation (Respondent). Petitioners sought a declaratory judgment that a purported right of way and easement in favor of Respondent against real property now owned by Petitioners in Tincum Township, Bucks County, Pennsylvania and known as 649 Headquarters Road, Ottsville, PA 18942 (Subject Property) is invalid.

By deed dated January 17, 2020, the former owner of the Subject Property conveyed to Respondent a 2,962 square foot temporary construction easement for consideration of \$150 and a 690 square foot right of way and 208 square foot slope easement for \$250. This instrument was then recorded in the Bucks County Recorder of Deeds office on September 30, 2020. By special warranty deed dated June 25, 2020, the former owner conveyed the entire Subject Property to Petitioners for consideration of \$1,175,000. The special warranty deed made no mention of any right of way or easement in favor of Respondent. This instrument was filed in the Bucks County Recorder of Deeds office on August 6, 2020. Petitioners assert that they are subsequent bona fide purchasers for value who did not have actual or constructive notice of the right of way or easement in favor of Respondent. Petitioners thus argue that because their deed was recorded before Respondent's deed was recorded, the right of way and easements are void as against them under

21 P.S. §§ 351, 444.

On November 30, 2022, Respondent filed in Bucks County Court of Common Pleas a declaration of taking in eminent domain condemning a fee simple right of way, a slope easement and a temporary construction easement. Petitioners forcefully assert that this action was “**to secure the very same easements.**” Petitioners’ Reply Brief in Support of Summary Judgment and Sanctions at p. 7 (emphasis in original). Respondent acknowledges that “the property has since been condemned by declaration of taking.” Respondent’s Respondent to Petitioners’ Statement of Undisputed Material Facts ¶ 31.

In bringing this action, Petitioners asserted that they are the rightful owners of certain property rights disputed with Respondent, a Commonwealth agency. It is clear that, regardless of the merits of Petitioners’ claim, through the condemnation process Respondent has now become the owner of those rights. A tribunal generally will not decide moot questions.¹ The mootness doctrine provides:

The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit has gotten underway – changes in the facts or in the law – which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that “an actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed”

Pap’s A.M. v. City of Erie, 812 A.2d 591, 599-600 (Pa. 2002). Because Petitioners cannot receive the relief they seek even if they are correct about the invalidity of the right of way and easements Respondent purportedly acquired from the trustee, this matter is moot. *See, Battiste v. Borough of East McKeesport*, 94 A.3d 418, 424 (Pa. Cmwlth. 2014) (assuming *arguendo* that developer may have been entitled to occupancy permits when he first applied for them, because building became

¹ The tribunal may *sua sponte* raise the issue of mootness as “courts cannot decide moot or abstract questions, nor can we enter a judgment or decree to which effect cannot be given.” *Battiste v. Borough of East McKeesport*, 94 A.3d 418, 424 (Pa. Cmwlth. 2014).

uninhabitable, issuance of occupancy permits is moot).

In its motion for summary judgment, Petitioners ask for an award of attorney fees and costs, because Respondent had initiated a new taking/condemnation action for the same easement despite having represented to the Board (and other agencies) that it already owned the purported easement. Petitioners assert that Respondent's action is an admission that its prior easement purchase is void and its recording practices fraudulent. Petitioners describe this condemnation as a cynical and calculated action intended to deprive their due process rights and as contemptuous of the Board's jurisdiction.² To the contrary, the Board considers Respondent to have acted responsibly in reevaluating its position. Petitioners have not cited any authority for the Board to award attorney fees or costs, and the Board is not aware of any such authority. The Board declines to consider any award.

AND NOW, this _____ day of April, 2023, the State Board of Property³ **DISMISSES** this matter as moot.

BY ORDER:



Jason E. McMurry, Esquire
Designee of the Secretary of the Commonwealth
Chairman, Board of Property

² By order dated December 5, 2022, the Board denied Petitioners' request to stay Respondent's notice of declaration of taking. The Board reasoned, "A Commonwealth agency's attempt to condemn real property that is at issue in a proceeding before the Board is no more contemptuous of the Board's authority to adjudicate the matter than the agency's attempt to negotiate the purchase of the property from the petitioner, i.e., an offer of settlement."

³ Board member Thomas P. Howell, Esquire, has recused and has not participated in the deliberation or decision in this matter.

Counsel for Petitioner: Timothy J. Bergère, Esquire
Bianca A. Valcarce, Esquire
ARMSTRONG TEASDALE, LLP
2005 Market Street, 29th Floor
Philadelphia, PA 19103

Counsel for Respondent: Rulla A. Moor, Assistant Counsel
Pennsylvania Department of Transportation
Office of Chief Counsel, Eastern Region
7000 Gerdes Boulevard
King of Prussia, PA 19406

Board counsel: Thomas A. Blackburn, Esquire

Date of mailing: [4.25.2023](#)



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

Thomas A. Blackburn
Hearing Examiner

email: tblackburn@pa.gov

April 25, 2023

Timothy J. Bergère, Esquire
Bianca A. Valcarce, Esquire
ARMSTRONG TEASDALE, LLP
2005 Market Street, 29th Floor
Philadelphia, PA 19103

Rulla A. Moor, Assistant Counsel
Pennsylvania Department of Transportation
Office of Chief Counsel, Eastern Region
7000 Gerdes Boulevard
King of Prussia, PA 19406

Re: *Steven Gidumal and Virtus Capital Advisors, LLC v. Cmwlt. of Pa., Dept. of Transportation,*
Docket No. BP-2022-0002

Dear counsel:

Attached is a final order issued by the State Board of Property.

Sincerely,

A handwritten signature in blue ink that reads "Thomas A. Blackburn".

Thomas A. Blackburn, counsel
State Board of Property

cc: Eileen Quinn, Board administrator

