No. 2--08--0562

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF LAKE IN THE HILLS, an Illinois municipal corporation,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 07--ED--5
THE ATHANS COMPANY, an Illinois general partnership, HOME STATE BANK, as Mortgagee, and UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,	)	Honorable Michael T. Caldwell, Judge, Presiding.
Defendants-Appellants.	)	

SUMMARY ORDER

Defendants, the Athans Company, Home State Bank, and unknown owners and non-record claimants (hereinafter "Athans") appeal from the trial court's orders denying Athans' traverse and motion to dismiss and its motion to reconsider. We affirm.

Athans owned two parcels of land located near Lake in the Hills Airport and Pyott Road. Parcel 1 contained a building (4100 square feet of office space and 7800 square feet of aircraft hangar space), an entry gate, a paved driveway, a parking lot and hangar apron area, a landscaped storm water retention basin, a wrought iron fence, and an irrigation system. Athans owned a beneficial interest, through a land trust, in Parcel 2, which was used by a third party for firewood sales.

Plaintiff, the Village of Lake in the Hills, sought to obtain a portion of Parcel 1, approximately .74 of an acre, as part of an airport expansion. The portion sought by the Village included the driveway and parking lot. Parcel 1 had no other access to Pyott Road or any other public highway other than the driveway contained in the property that the Village sought. The portion sought also severed a taxiway linking the building to the adjacent airport.

In a letter dated March 16, 2006, the Village notified Athans of its interest in obtaining the property at issue and explained that it would provide for the replacement or relocation of various improvements within the property. While George Athans, owner of the Athans Company, denied ever seeing that letter, he did admit that the parties entered into discussions about the acquisition of the property at least as far back as October 2006. The Village obtained three appraisals of Athans' property, including a review appraisal; all the appraisals treated the two parcels as one property. The Village submitted the appraisals to Athans and offered Athans the highest appraised value, $430,000, in December 2006. Athans did not accept the offer. The record then shows that there was extensive correspondence between the parties and many meetings involving, at various times, George Athans, his attorney, the Village attorney, the Village engineer, the Village airport manager, the Village administrator, and the Village president. During the course of the discussions Athans presented his concerns regarding the taking of his property. Athans obtained an appraisal, dated August 4, 2007, that assessed the settlement damages, assuming some "non-monetary" concessions by the Village, at $525,000. This appraisal also assumed that both parcels could be developed together. Athans counter-offered the Village, asking for the $525,000 compensation as established by his appraisal plus reimbursement of appraisal, legal, and engineering expenses not to exceed $25,000 and up to $10,000 for the creation of a waterfall or fountain on the property, for a total of $560,000.

On August 24, 2007, the Village reiterated its prior offer of $430,000 and confirmed that it would, subject to public hearing and approval by the village board, approve a zoning plan regarding Parcel 2, proposed by Athans. The Village would replace and relocate structures and improvements affected by the taking, replace a wrought iron fence, and agreed to accept storm water retention from both parcels on the taken property. After more than a year of negotiations, the Village considered the matter to be at an impasse. No agreement was reached.

On August 29, 2007, the Village filed a complaint for condemnation, which it subsequently amended in October, 2007. Athans filed a traverse and motion to dismiss on December 14. Following a hearing, the trial court entered an order on March 18, 2008, denying Athans' traverse and motion to dismiss. The court also dismissed Athans' motion to reconsider, and this appeal followed.

Athans now contends that the trial court erred in denying its traverse and motion to dismiss. On review, we will reverse a trial court's decision on a traverse and motion to dismiss only where the trial court's order is against the manifest weight of the evidence. City of Naperville v. Old Second National Bank of Aurora, 327 Ill. App. 3d 734, 739 (2002). A trial court's judgment is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. City of Naperville, 327 Ill. App. 3d at 739. During a hearing on a traverse and motion to dismiss, the trial court is to assess the credibility of the witnesses and determine the weight to be given to their testimony. City of Naperville, 327 Ill. App. 3d at 739.

Athans first argues that the Village failed to negotiate with it in good faith before filing the condemnation suit. Good-faith negotiations with the landowner are a condition precedent to condemnation proceedings brought pursuant to the Eminent Domain Act. Department of Transportation ex rel. People v. [illegible] 209 Ill. App. 3d [illegible]

governmental agency seeking to exercise its power of eminent domain must make a good-faith attempt to reach an agreement with the property owner on the amount of compensation for the property. City of Naperville, 327 Ill. App. 3d at 739. "Good faith" may take many forms. Department of Transportation ex rel. People v. Hunziker, 342 Ill. App. 3d 588, 594 (2003). Whether a party has acted in good faith is a question of fact, and a trial court's finding of good faith, or a lack thereof, will not be reversed unless it is against the manifest weight of the evidence. 151 Interstate Road Corporation, 209 Ill. 2d at 488.

Here, the trial found that, after the Village made its offer of $430,000 in December 2006, "a period of extensive negotiations" that "took on a life of their own" ensued. These negotiations involved various concerns brought up by Athans, including rear access to the existing buildings, a new driveway, re-engineering of the irrigation system, new storm water retention, landscaping, lighting, installation of a new fence, and other items. By the summer of 2007, the Village agreed to replace and relocate any structures or improvements that would need to be relocated as a result of the taking of the property, to approve a zoning plan proposed by Athans regarding Parcel 2, and to accept storm water from Athans' proposed development of Parcel 2 onto its property. Even then, Athans raised additional issues. The trial court found that these extensive negotiations were good-faith negotiations, and we cannot conclude that this was against the manifest weight of the evidence. The Village obtained three appraisals of the property from professionally credentialed appraisers, and initially offered the highest appraised value that it had obtained, an amount that was not absurdly lower than the appraised value calculated in Athans' own appraisal. It then worked extensively with Athans to address many concerns that Athans raised. We can find no error in the trial court's finding that the Village negotiated with Athans in good faith.

Athans also argues that the negotiations were not in good faith because the Village improperly instructed the appraisers to treat the two parcels as a single property. We first note that, while all three of the Village's appraisers appraised the two parcels as a single property, so, too, did Athans' appraiser. Furthermore, the issue at this point in the process is whether the Village negotiated with Athans in good faith. The treatment of the parcels as a single property may have an effect on the ultimate question of damage to the remainder as a result of the taking; however, damages are not yet at issue. The Village's theory of how to value the property, even if disagreed with by Athans, does not, by itself, make all its other attempts at negotiation in bad faith. Similarly, Athans' argument regarding the alleged failure of the Village's appraisals to provide compensation for the taking of access to Parcel 1 is an issue of damages, not an issue of good faith.

For these reasons, the judgment of the circuit court of McHenry County is affirmed in accordance with Supreme Court Rule 23(c)(8) (166 Ill. 2d R. 23(c)(8)).

McLAREN, J., with JORGENSEN and SCHOSTOK, JJ., concurring.