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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4619-07T3

CASINO REINVESTMENT
DEVELOPMENT AUTHORITY,

Plaintiff-Appellant,

v.

RICHARD ANGUEIRA,

Defendant-Respondent,

and

CITY OF ATLANTIC CITY, ATLANTIC
CITY SEWERAGE COMPANY and
ATLANTIC CITY MUNICIPAL
UTILITIES AUTHORITY,

Defendants,

and

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., as nominee for
COUNTRYWIDE HOME LOANS, INC.

Intervenor-Respondent.

Consolidated with

CASINO REINVESTMENT
DEVELOPMENT AUTHORITY,

Plaintiff-Appellant,

v.

RICHARD ANGUEIRA, GLORIA ROMAN,
COUNTRYWIDE FINANCIAL CORPORATION,

Defendant-Respondents,

and

CITY OF ATLANTIC CITY TAX ASSESSOR,

Defendant,

and

RICHARD ANGUEIRA and
GLORIA ROMAN,

Third-Party
Plaintiffs-Respondents,

v.

EQUITY TITLE AGENCY, INC. and
CHICAGO TITLE INSURANCE CO.,

Third-Party Defendants.

Argued April 22, 2009 - Decided May 20, 2009

Before Judges Cuff, Fisher and Baxter.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket Nos. L-3913-04.

Renee A. Rubino argued the cause for appellant (Rubino Law Group, LLC, attorneys; Ms. Rubino, of counsel and on the brief).

Richard M. Kitrick argued the cause for respondents, Richard Angueira and Gloria Roman (Law Offices of Brian E. Rumpf, PC, attorneys; Mr. Kitrick, on the brief).

David B. Snyder argued the cause for respondent, Mortgage Electronic Registration Systems, Inc., as nominee for Countryside Home Loans, Inc. (Fox Rothschild LLP, attorneys; Mr. Snyder, on the brief).

PER CURIAM

In these consolidated condemnation and quiet title actions, we consider whether the misfiling of a deed, which prevented a condemnor from learning that the property in question had been sold, and consequently prevented the condemnor from giving the owner notice of the condemnation proceeding, entitled the owner of the property to an order vacating the declaration of taking; or whether instead, the owner's remedy is limited to its opportunity to participate in the commissioners' fair value hearing. We conclude that the trial judge erred when she concluded that the actual taking must be vacated, and reverse.

I.

The property that is the subject of this appeal, known as Block 420, Lot 2 on the tax map of Atlantic City, is located at 640 Lexington Avenue. Defendant Richard Angueira conveyed the property to his mother, defendant Gloria Roman, in December 2003 for the sum of \$85,000. Roman secured a purchase money mortgage of \$76,500¹ from Countrywide Financial Corporation

¹ Countrywide issued a mortgage of \$76,500 because it mistakenly appraised the home next door.

(Countrywide).² The deed and mortgage were recorded on January 26, 2004; however, because Angueira's name was misspelled as "Anguiera" throughout the deed of conveyance, both the mortgage and the deed were misindexed. The Clerk's Office misindexed the deed under yet a third spelling of Angueira, namely "Anguirea."

As part of a redevelopment project, plaintiff Casino Reinvestment Development Authority (CRDA), sought to acquire all of the property in Blocks 420 and 421 in the City of Atlantic City, by condemnation if necessary.³ Consequently, on January 28, 2003, the CRDA undertook a title search of the property in question, which revealed the property to be titled in Angueira's name, which was correct, because Angueira did not sell the property to his mother until December 2003, which was eleven months later.

On September 30, 2003, while Angueira was still the owner of the property, CRDA mailed him, by both regular and certified mail, an offer to purchase the property for the sum of \$9,250,

² Mortgage Electronic Registration Systems, Inc. (MERS) participated in the trial court proceedings as the nominee for Countrywide; however, because Countrywide was the lender, we refer to Countrywide, rather than MERS, throughout this opinion.

³ CRDA is an independent entity, established to enhance and improve properties in Atlantic City, N.J.S.A. 5:12-160, and is authorized to exercise the power of eminent domain to accomplish such purposes. N.J.S.A. 5:12-161(p).

in keeping with an appraisal CRDA had obtained.⁴ The property, at the time, consisted of a small lot with a boarded-up row home. CRDA sent its offer to purchase to Angueira at 129 N. Pennsylvania Avenue in Atlantic City, which was the address listed for him when he took title to the property in 2002. The letter CRDA sent to Angueira by certified mail was returned to CRDA by the postal service as unclaimed after two notices to Angueira yielded no response. The offer sent to Angueira by regular mail was not returned.

More than a year later, on December 8, 2004, after receiving no response from Angueira to its offer to purchase, CRDA instituted a condemnation action in which it identified Angueira as owner of the property, which was incorrect because he had sold the property to his mother a year earlier. It is undisputed that CRDA did not conduct an additional title search prior to filing its condemnation complaint on December 8, 2004. Neither Roman nor Countrywide were named as defendants.

On January 7, 2005, CRDA recorded the required declaration of taking in the Atlantic County Clerk's Office and deposited the estimated fair market value of the property with the Clerk of the Superior Court. The declaration of taking identified

⁴ Although CRDA's appraisal determined the property's fair market value was \$17,000, an environmental report concluded that contamination reduced its value by \$7,750.

Angueira as the owner of the property. Simultaneously, CRDA duly recorded a notice of lis pendens in the Atlantic County Clerk's Office.⁵

CRDA's condemnation complaint alleged, pursuant to N.J.S.A. 20:3-6, that "CRDA ha[d] attempted, but ha[d] been unable, to acquire the property through bona fide negotiations with the owner," whom it identified as Angueira. The court set January 14, 2005 as the return date of the order to show cause on the CRDA's condemnation complaint.⁶ On January 10, 2005, four days before that return date, CRDA conducted a second title search of the property. However, because of the misindexing of the Angueira to Roman deed, the CRDA title search failed to disclose Roman's ownership of the property. On the return date, although he had been served with notice of the hearing, Angueira failed to appear and failed to notify CRDA that he no longer owned the property.

The January 14, 2005 hearing proceeded as an uncontested matter. The January 19, 2005 order permitted CRDA to acquire the property, and appointed three residents of Atlantic City to

⁵ CRDA's condemnation complaint and its notice of lis pendens also named the City of Atlantic City, the Atlantic City Sewerage Authority and the Atlantic City Municipal Utilities Authority as entities that had an interest in the property by reason of unpaid taxes and assessments.

⁶ Condemnation proceedings are maintained as a summary action. R. 4:73-1; R. 4:67.

serve as commissioners to determine just compensation, pursuant to N.J.S.A. 20:3-12. A few weeks later, on January 24, 2005, CRDA turned off all utilities, and in April 2005, CRDA demolished the structure located on the property.

On October 28, 2005, the commissioners sent Angueira a letter advising him that the commissioners' fair value hearing was scheduled for November 22, 2005, and notifying him that if he failed to appear at the hearing, personally or through counsel, he would be foreclosed from appealing the commissioners' fair value determination. The October 28, 2005 notice of hearing was sent to Angueira at the same address, 129 N. Pennsylvania Avenue in Atlantic City, to which CRDA had sent its September 30, 2003 offer to purchase, its December 8, 2004 condemnation complaint, and its January 7, 2005 declaration of taking. On November 4, 2005, shortly after receiving the letter notifying him of the fair value hearings, Angueira contacted CRDA, and for the first time, advised CRDA of his sale of the property to his mother in December 2003.

Having been notified that Angueira was no longer the owner of the property, CRDA requested the commissioners to cancel the scheduled November 22, 2005 hearing. CRDA sought, and was granted, an extension of time from the court to further investigate the matter. During its ensuing investigation, CRDA

learned of the December 2003 sale of the property from Angueira to Roman as well as Countrywide's purchase money mortgage. CRDA told Angueira that it was unaware at the time it filed its condemnation complaint, in December 2004, that he had sold the property to Roman. CRDA also asserted that it was not obligated to vacate the taking because it had properly relied upon its January 20, 2005 title search. CRDA's February 1, 2006 letter to Angueira's attorney consequently stated:

The dispositive point in all of this is that the deed from Angueira to Roman was not duly recorded within the meaning of N.J.S.A. 46:22-1. Therefore, it is of no effect against the CRDA as a bona fide purchaser without notice of the previously attempted conveyance. Rather than amend or dismiss the complaint as you suggested[,]. . . we are going to file a quiet title action in the Chancery Division to remove any clouds from the CRDA's title to this property.

As we understand the record, neither Roman nor anyone acting on her behalf had contacted CRDA as of the time CRDA sent its letter to Angueira on February 1, 2006.

In June 2006, CRDA conveyed many of the lots in Block 420 and 421 to the project redeveloper, including the property owned by Roman. CRDA filed its quiet title action on June 26, 2006, naming Angueira, Roman and Countrywide as defendants. A June 2006 order had permitted Countrywide, which had foreclosed on the Roman mortgage in January 2006, to intervene in the still-

pending condemnation proceeding and to participate in the commissioners' fair value hearing. CRDA's motion for reconsideration of that intervention order was unsuccessful. Subsequently, the judge consolidated the quiet title and condemnation actions under the quiet title action's docket number.

In their November 6, 2006 answer and counterclaim in the quiet title action, Angueira and Roman asserted that title to the property should be quieted in favor of Roman, alleging that CRDA's acquisition of the property through the condemnation proceeding was fatally flawed because CRDA failed to engage in the good faith negotiations with the owner that are required by N.J.S.A. 20:3-6.⁷

In February 2007, both sides filed motions for summary judgment. CRDA argued that the misindexed Roman deed and mortgage were not protected by the Recording Act, and therefore asserted that such filings were "void as against the CRDA." As such, CRDA asserted that once it received knowledge of Countrywide and Roman's alleged interest, it nonetheless had no obligation to dismiss the condemnation complaint or halt the condemnation proceedings. CRDA also agreed that, due to its

⁷ Although the answer filed by Angueira and Roman is not included in the record on appeal, the parties do not dispute its contents.

reliance on the Recording Act, Roman and Countrywide were precluded from participating in the commissioners' fair value hearing.

For their part, Roman, Angueira and Countrywide asserted that, pursuant to N.J.S.A. 20:3-6, a condemnor is required to undertake a diligent title search prior to the filing of its condemnation complaint and to engage in bona fide negotiations with the owner of the property before filing a condemnation complaint. In support of their summary judgment motion, Roman and Anguiera asserted that had CRDA simply contacted the Atlantic City Tax Assessor's office, it would have discovered that Roman was the true owner because she had been paying taxes on the property for two years.

Roman and Angueira also supported their summary judgment motion with a certification from Steve Iaconelli, who asserted that he has searched titles to real estate in Atlantic County on behalf of various title insurance companies for nearly twenty-four years. He maintained that "[t]echnology has drastically changed the title searching process since 1990," and that because "deeds in Atlantic County are regularly misindexed, . . . it is the practice of most [title] searchers . . . to input the least amount of information as possible in the search engine when searching the index."

Iaconelli maintained that diligent title searchers would have inserted only the letters "Angu" in their search of the database, and had CRDA's title searcher done so, its search would have revealed the deed from Angueira to Roman. Iaconelli also certified that a search of the property tax assessor's database would have revealed that the new owner of the property for tax purposes was Gloria Roman and that, armed with such information, the searcher could have located the Angueira to Roman deed by searching the index under the name of Gloria Roman.

On April 11, 2007, after oral argument, the judge entered an order supported by a written opinion, denying CRDA's motion for summary judgment and granting the cross-motion filed by Angueira and Roman. The order specified that: (1) the condemnation complaint was dismissed "without prejudice to the CRDA's right to file another condemnation complaint seeking to condemn the Property"; and (2) the owner of the Property was Roman, and "the CRDA, or any entity or person to whom it transferred the Property, has no right, title, or interest in the Property and any Orders previously entered to the contrary [were] vacated." The order also scheduled a telephone case management conference for May 24, 2007, "to address a schedule

for resolution of issues raised in the Counterclaim, including Roman's request for damages."

In so ruling, the judge reasoned that because CRDA learned before the commissioners' fair value hearing took place that Angueira was not the owner of the property at the time it filed its condemnation complaint, CRDA was obliged to "confront the receipt of such actual notice and address the issues forthrightly and in a manner which comports with the letter and intent of the Eminent Domain Act." The judge commented that instead of attempting to amicably resolve the matter with Roman and Countrywide, or simply dismissing its condemnation complaint and starting the process over, CRDA vehemently opposed Countrywide's attempt to protect its interests when it opposed Countrywide's motion for intervention. Finally, the judge held that the "misindexing of the Angueira to Roman deed, in the face of actual notice of the deed and [Countrywide's] mortgage, does not serve as a basis to give CRDA the 'advantage' in determining just compensation by precluding [Countrywide's] and Roman's participation in the condemnation proceeding." The judge reasoned that the:

Recording Act, N.J.S.A. 46:15-1[.1] to 46:26-1, exists for the purpose of providing a reliable system that the public can trust with regard to providing notice concerning a host of recorded transactions. However, reliance upon the Recording Act in the

context of the unique facts involved in the instant condemnation matter to preclude [Countrywide], and now Roman, from asserting an interest in the determination of just compensation for the property is misplaced.

Third, the judge relied on what she characterized as CRDA's failure to comply with "the letter as well as the spirit of the Eminent Domain Act." The judge pointed to CRDA's failure to comply with the statutory requirement of engaging in bona fide negotiations with the owner before filing a condemnation complaint. She held, relying on City of Passaic v. Shennett, 390 N.J. Super. 475, 482-83 (App. Div. 2007), that additional attempts should have been made to ensure that Angueira received CRDA's offer to purchase once the certified mail was returned as unclaimed. The judge also criticized CRDA's failure to conduct any additional title searches between January 28, 2003, when Angueira still owned the property and January 10, 2005, by which time Roman had already purchased it. For all of those reasons, the judge vacated CRDA's taking of the property and divested the interest that the project developer established when CRDA transferred title to that developer in June 2006.

On November 27, 2007, the judge entered an order granting Countrywide's motion for attorney's fees in the amount of \$52,225. On April 18, 2008, the judge ordered CRDA to pay \$15,000 in counsel fees and costs to Roman and Angueira, as well

as an additional \$15,000 as damages. The judge stayed all orders.

On appeal, CRDA does not challenge the trial court's findings of fact. Although we accept those findings, we owe no deference to the judge's legal conclusions. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

II.

We turn first to CRDA's claim that the judge erred when she permitted Countrywide to intervene in these proceedings. That argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(A) and (E). Suffice it to say, Countrywide demonstrated a sufficient stake in the outcome of these proceedings to warrant intervention.

III.

We turn next to CRDA's claim that the judge erred by concluding that "in the context of the unique facts involved [here]," CRDA's reliance on the Recording Act is misplaced and consequently does not protect CRDA from the claims asserted by Roman and Countrywide. The Recording Act (Act), N.J.S.A. 46:15-1.1 to 46:26-1, provides in relevant part that whenever any deed

has been "duly recorded or lodged for record" with the county recording officer, "such record shall, from that time, be notice to all . . . purchasers . . . of the execution of the deed or instrument so recorded and of the contents thereof." N.J.S.A. 46:21-1.

The Act further provides that until a deed is "duly recorded or lodged for record," it is "void and of no effect against . . . all subsequent bona fide purchasers . . . not having notice thereof" N.J.S.A. 46:22-1. CRDA argues that because the deed conveying title from Angueira to Roman was not properly recorded, it was void and of no effect against CRDA and therefore did not operate to invalidate CRDA's taking of the property without notice to Roman.

"Generally speaking, and absent any unusual equity, a court should decide a question of title . . . in the way that will best support and maintain the integrity of the recording system." Sonderman v. Remington Constr. Co., Inc., 127 N.J. 96, 108 (1992) (internal alteration omitted) (quoting Palamarg Realty Co. v. Rehac, 80 N.J. 446, 453 (1979)). Title searchers who use "standard" searching techniques in their search of deed book indexes are entitled to rely on the results so obtained. Id. at 110.

In Sonderman, the Court addressed a situation where the owner of the property, Remington Construction Company, obtained an order vacating a tax foreclosure sale of its property, but it did not record that order as a deed. Id. at 107. Consequently, Sonderman, the subsequent purchaser, was unaware when he purchased the property from the Township of Jackson that the Township was not possessed of title and therefore could not convey title. Id. at 108-09. The Court emphasized that the case presented "an exceptional set of facts" where the "equitable result [was] to deny [the subsequent purchaser's] request to quiet title." Id. at 109.

Although in Sonderman the Court ultimately found that title should not be quieted in favor of the subsequent purchaser who had relied on a title search that did not disclose a defect in the chain of title, the Court emphasized that such a result was an exception to the usual rule, and could be accomplished "without violating the integrity of the recording system" Ibid. In fact, the Court expressly stated its "affirm[ance of its] commitment to the proposition that 'a purchaser shall be charged only with such notice from the records as can be ascertained by a reasonable search of those records.'" Ibid. (quoting Donald B. Jones, "The New Jersey Recording Act - a Study of Its Policy," 12 Rutgers L. Rev. 328, 335 (1957)). The

Court reiterated that so long as a title searcher complies with "standard practice[s]" in searching title, a bona fide purchaser is chargeable only with what appears in the record of deeds.

Ibid.

In keeping with Sonderman, the Court held in Island Venture Associates v. Department of Environmental Protection, 179 N.J. 485, 492 (2004), that "in certain contexts 'the integrity of the recording scheme is paramount,'" 179 N.J. 485, 492 (2004) (quoting Cox v. RKA Corp., 164 N.J. 487, 497 (2000)), and without "'any unusual equity[,] the stability of titles and conveyancing requires the judiciary to follow that course that will best support and maintain the integrity of the recording system.'" Ibid. (quoting Cox, supra, 164 N.J. at 497). In making this determination, a court must consider "the totality of the circumstances," including the "failure to [record the instrument properly], the consequences of that failure to the subsequent purchase, and the particular public interest implicated by the dispute." Id. at 495. Furthermore, subsequent purchasers will be charged with notice of a recorded instrument only if that instrument is capable of being "'discovered by a 'reasonable' search of the particular change of title.'" Id. at 493 (quoting Palamarq, supra, 80 N.J. at 456).

Applying the Island Venture "totality of the circumstances" factors to the record presented in this case, we are satisfied that no "special equities" warrant a result that would undermine the integrity of the recording system. In particular, the instrument in question was not indexed properly by the County Clerk and Angueira permitted the deed to be filed without correcting the misspelling of his name.⁸ Those errors prevented CRDA from learning of Roman's ownership despite the title search CRDA conducted immediately before it filed its condemnation complaint. Moreover, vacating the taking would impose a significant hurdle to CRDA's efforts to redevelop this section of Atlantic City, and would disserve the public interest. While we recognize a property owner's constitutional right to resist a governmental taking, see Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361, 391-93 (App. Div. 2008), the record demonstrates that before the trial court, Roman pressed her right to just compensation and did not maintain that the actual taking should be vacated.⁹ Thus, after applying the Island

⁸ We are mindful of Angueira's claim that the title company told him not to worry about the misspelling. Nonetheless, nothing prevented him from insisting that the deed be corrected before he signed it as grantor.

⁹ At oral argument before the Law Division on March 23, 2007, the lawyer representing Angueira and Roman commented, "We don't believe that [the CRDA has] the right to condemn Ms. Roman's property. But if they pay us fair market value for the

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Venture factors, we conclude such factors do not warrant disregarding CRDA's justifiable reliance on its title search of recorded deeds.¹⁰

We reject the judge's conclusion that in this case CRDA was not entitled to the protections of the Act. We agree with CRDA that the judge's decision in Roman's favor wrongly undermines the integrity of the Act, because none of the factors the judge pointed to here as "unique," or as special equities, are sufficiently exceptional or significant as to warrant a departure from the longstanding rule that requires judges to disregard deeds that are not properly recorded.

In particular, the judge reasoned that CRDA learned of Roman's ownership before the commissioners' fair value hearing was scheduled to take place. While we agree that such knowledge obligated CRDA to take affirmative action at that point to halt the commissioners' hearing that was scheduled to occur a few

(continued)

property, we're not going to contest it. We want the mortgage paid, and we want to be paid fair market value."

¹⁰ We note Angueira and Roman's argument, supported by Iaconelli's certification, that CRDA should have used the shortened version, "Angu," rather than Angueira's full name when it searched the deed index. We are unaware of any treatise or other authoritative source that so requires, or which treats such method as a standard method for searching titles. As the Court observed in Sonderman, supra, 127 N.J. at 110, title searchers should use "current searching practice," and until such standards shift to include Iaconelli's described method, we see no reason to fault CRDA's methodology.

days later, CRDA complied with such obligation when it asked the commissioners to cancel the November 22, 2005 fair value hearing and asked the judge for time to investigate the matter.

We cannot agree, however, with the judge's conclusion that CRDA was also obligated to request the court to vacate the earlier January 7, 2005 declaration of taking or the January 19, 2005 judgment that transferred title to CRDA, both of which were filed and finalized nine months before Angueira advised CRDA of Roman's ownership. Both of the January 2005 events occurred as a result of CRDA's justifiable reliance on its January 28, 2003 and January 10, 2005 title searches, neither of which revealed Roman's ownership, the first because Angueira still owned the property and the second because of the misspelling and misindexing of the deed. Because CRDA did not learn of Roman's ownership and Countrywide's claim until the eve of the fair value hearing, its duty to recognize their claims arose from that moment forward but does not alter their previous justifiable reliance on the title searches previously conducted.

We also part company with the judge's dual conclusions: that because the offer to purchase sent by CRDA to Angueira in September 2003 by certified mail came back unclaimed, CRDA had an affirmative obligation to conduct further investigation to assure itself that Angueira received its offer to purchase; and

CRDA's failure to do so requires vacating the taking and dismissal of CRDA's condemnation complaint. While we agree that the Eminent Domain Act obligates a condemnor to engage in good faith negotiations with an owner before filing a complaint for condemnation, N.J.S.A. 20:3-6, we are unaware of any decision ever holding that a condemnor has the obligation the judge described. Moreover, neither Angueira nor Roman has ever claimed that Angueira did not receive the September 2003 offer to purchase that was sent to Angueira by regular mail.

The judge's reliance on Passaic v. Shennett, supra, is misplaced because there the City of Passaic (City) never served the owner of the property with its offer to purchase, 290 N.J. Super. at 482, and mailed its complaint for condemnation to the owner at an invalid address even though the City had consistently mailed tax bills to the owner's correct address. Id. at 478. Unquestionably, the facts of Shennett demonstrate an egregious and deliberate effort to deprive the property owner of his right to object to the taking of his property.

Here, CRDA sent its notice of taking, complaint for condemnation and notice of the commissioners' fair value hearing to the same address. Unquestionably, Angueira received those notices as evidenced by his response to the notice of the fair value hearing. Thus, the judge's reliance on Shennett is

misplaced. Consequently, we cannot agree with the judge's conclusion that because CRDA did not make "additional attempts" to engage in pre-filing negotiations with Angueira after it sent its offer to purchase, the January 19, 2005 judgment that approved CRDA's exercise of eminent domain must be vacated.

Thus, we reverse the trial judge's conclusion that the taking by CRDA should be vacated and its complaint for condemnation dismissed. We reject the judge's conclusion that CRDA's knowledge of Roman's ownership -- which it did not gain until October, 2005 -- entitled Roman and Countrywide to the benefit of undoing a legitimate taking that had occurred nine months earlier. Accordingly, we reinstate the order of January 19, 2005 that approved the taking.

At appellate oral argument, CRDA stated that it had no objection to permitting Countrywide and Roman to participate in the commissioners' fair value hearing. That position represents a modification of the position CRDA asserted in its appellate briefs, where it objected to such participation. We remand for the scheduling of the commissioner's fair value hearing, at which Countrywide and Roman shall be entitled to participate.

In light of our disposition of this appeal, we vacate the award of counsel fees and damages to Angueira, Roman and Countrywide.

Reversed and remanded for the scheduling of the fair value hearing.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION