UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation,

Plaintiff,

v. **Civil No. 03-74697**
Hon. John Feikens

CANADIAN PACIFIC RAILWAY, LTD., a foreign corporation, EXPRESSWAY TERMINAL OPERATIONS, L.L.C., a Delaware Corporation, BOREALIS TRANSPORTATION INFRASTRUCTURE TRUST, a foreign corporation, and DETROIT RIVER TUNNEL PARTNERSHIP, a Partnership,

Defendants.

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OPINION AND ORDER

I have two motions from Plaintiff before me in this case: a motion for reconsideration of my June 25, 2004 order and a motion to strike Defendants' Brief in Opposition.

I begin by DENYING Plaintiff's Motion to Strike. First, Plaintiff failed to seek concurrence from Defendants in violation of our Local Rule. Had it done so, it would have learned that this Court gave permission to Defendants to file their brief because the brief would aid me in deciding Plaintiff's Motion for Reconsideration. Based on the brief accompanying Plaintiff's Motion for Reconsideration, and Defendants' brief, I now have sufficient information to decide the motion for reconsideration, and no further briefs are needed.

The facts of this case are summarized in my previous Opinion.

I DENY Plaintiff's Motion for Reconsideration. Its motion is based on two arguments: first, that new evidence reveals that the property at issue is not being used for railroad purposes, despite Defendants' statements to the contrary, and second, that Defendants' misled this Court about the content of Plaintiff's brief.

First, the evidentiary submission does not qualify as new evidence. The air date of the radio broadcast offered is April 7, 2004, while the hearing was on April 19, 2004. Thus, Plaintiff had the opportunity to present that evidence to this Court. However, even if it were new evidence, it does not contradict Defendants' statements about the use of the Amtrak property. Defendants state they intend to use the property to build a new, modern railroad tunnel. The radio report only indicates that Defendants intend to convert their existing railroad tunnel to a tunnel for trucks. It is entirely possible that Defendants intend to undertake both a conversion of the old tunnel for trucks and the construction of a new rail tunnel. This is, in fact, what Defendants have claimed in their papers.

Second, Plaintiff argues that its brief did not concede that the property would be used for railroad purposes, and that Defendants misled this Court by arguing it did. First, I note that my Opinion was based on my own reading of Plaintiff's briefs, and not on any representation about its content that Defendants made. My re-reading of that brief confirms my original impression that Plaintiff's brief conceded that the Amtrak property was purchased for use for railroad purposes.

Accordingly, the Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

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John Feikens
U.S. District Judge

DATED: