No. _____

In the Supreme Court of the United States

ROBERT HOLTON,

Petitioner,

v.

ROBERT HENON, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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February 7, 2024

QUESTIONS PRESENTED

1. In 1951 the City of Philadelphia was granted Home Rule by the Pennsylvania General Assembly. In 1951, Philadelphia used its eminent domain power to condemn a tract of land adjacent to an inlet of the Delaware River that became known as the Frankford Creek Right of Way. Confronted with evidence that defendant Robert "Bobby" Henon ,a "high ranking" public official, tried and convicted for bribery, honest services fraud and other related federal crimes, conspired with another senior public official to remove Robert Holton from adjacent contiguous real property he owned and occupied, did not the District Court abuse its discretion by denial of Holton's motions to defer ruling upon the City's and individual defendants' motions for summary judgment to allow for taking of Henon's deposition upon oral examination, after Henon abandoned his appeal from that conviction, resigned his public office, and began serving his jail sentence?

2. When Henon, then serving as a City Councilman published and distributed a press release describing with particularity acts and conduct in furtherance of the alleged conspiracy by other public officials that did not occur until five months later and could only be known if the conspiracy was planned, should not summary judgment have been denied?

3. Did not the decision and opinion of the United States Supreme Court in Knick v Township of Scott, decided during the pendency of the present action and following the District Court's prior dismissal, reversed by the Court of Appeals, require the District Court to try the present action consistent with the

Fifth and Fourteenth Amendments, when the Taking of Holton's property in state court occurred in February 2012, payment has not been made, and the delay is based in part on circumstances alleged in this action?

PARTIES TO THE PROCEEDING

The parties whose judgment is sought to be reviewed are Robert Holton, plaintiff-appellant, Petitioner; Robert "Bobby" Henon, Darrin Gatti, Edward Jefferson, and City of Philadelphia, defendant appellees, Respondents.

STATEMENT OF RELATED PROCEEDINGS

Complaint in Eminent Domain filed in the Court of Common Pleas, Philadelphia County, First Judicial District No.120202885, February 24, 2012, "*In Re: City of Philadelphia, Condemnor vs. 4085 Richmond Street*" Judgement in Rem entered December 6,2016. Pending subject to determination by Board of View appointed July 24, 2018; Complaint filed in the United States District Court For the Eastern District of Pennsylvania No.2:18-cv-02228-CFK, May 25, 2018, *Robert Holton v. Bobby Henon, Darrin Gatti, Edward Jefferson*; Amended Complaint, same parties filed July 12, 2018; Order denying defendants' motions to strike or dismiss the Amended Complaint entered November 29, 2018; Answer to Amended Complaint filed December 12, 2018; Second Amended Complaint joining City of Philadelphia, filed January 22,2019; final judgment granting defendants' motion to dismiss the Second Amended Complaint, May 28, 2019, Motion For Reconsideration denied July 19, 2019; Notice of Appeal by Robert Holton to the United States Court of Appeals, Third Circuit, August 1, 2019, refiled August 7, 2019, Case No.22-1620 Order of November 13, 2020, vacating Order of Dismissal and remanding case to the District Court. Order of March 9, 2022, granting defendants' motion for summary judgment.

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The Third Circuit Opinion is unpublished and can be found at 2023 US App. Lexis 23845.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Holton commenced an action in the United States District Court for the Eastern District of Pennsylvania alleging civil rights violations, 28 U.S.C. 1343(A)(1)(4), and federal question jurisdiction, 28 U.S.C. 1331. The District Court dismissed the amended complaint granting defendants' motion to dismiss for lack of subject matter jurisdiction by application of the "Rooker Feldman doctrine". Holton appealed to the Third Circuit Court of Appeals. The order of dismissal was reversed and the case remanded to the district court. The District Court granted defendants' motion for summary judgment, dismissing the action for the second time. Following a second unsuccessful appeal to the Third Circuit Court of Appeals, Holton filed this petition for a writ of certiorari to review and set aside the dismissal.

REASONS FOR GRANTING THE PETITION

The City of Philadelphia and individual defendants contend that Holton has not met his burden of demonstrating a material fact issue regarding Robert (Bobby) Henon's, Darrin Gatti's, Edward Jefferson's and its liability for removing Holton from property adjacent to the City's owned property, and confiscation of assets thereon. The contention is nonsense. There is more than sufficient evidence that Henon colluded with Gatti, President of the Board of Surveyors of the Department of Streets to "eject" Holton without a writ of ejectment, to confiscate his stock in trade, without a writ of execution, and "take" Holton's property utilizing power granted to a political body to condemn real property for a public use, without a proposed or existing public use. The City of Philadelphia, and the individual defendants, acting in concert turned the Fourteenth Amendment on its head. Over a ten-year period, the City and the individual defendants used laws intended to protect private property and incidental rights to lower the value of those interests and rights. They include: use of the City's police power to create regulatory violations that didn't exist; use of the City legal resources to enforce compliance when there was no evidence of non-compliance; use of those claimed violations as leverage to buy out Holton, providing false testimony before administrative and judicial bodies, obtaining writs and similar enforcement mechanisms without a basis for issuance; and confiscating Holton's assets without notice or an opportunity to be heard, the definition of due process.

A "high ranking" public official is protected from discovery under well-established discovery guidelines in the state and federal courts in the eastern district of Pennsylvania where Philadelphia has home rule. Mr. Henon was accorded that status. Shortly after this action was brought, a federal grand jury heard evidence brought to its attention by the United States Attorney implicating Mr. Henon in illegal activities regarding misuse of his office, in concert with John Dougherty, the powerful head of the Brotherhood of Electrical Workers. An indictment was sought and the Grand Jury complied. Following motions attacking the indictment, Henon and Dougherty stood trial and were convicted. Holton was precluded from deposing Henon, not only by custom and practice, but in addition, Henon's privilege against self incrimination. Initially, Henon appealed his conviction. Over time he discontinued the appeal, resigned City employment in order to preserve his City pension, and cooperated in order to mitigate his sentence. He reported to jail and began a three and a half year sentence. Confronted with a defense summary judgment motion and affidavits, Holton sought an order deferring determination of summary judgment in order to allow for taking Henon's deposition on oral examination at a time when all constraints had expired. There wasn't any basis to deny what was not only a matter of right, but an essential component of meeting the burden of Rule 56. Yet the motion was twice denied, enabling the court to close the case. There were no other witnesses who would be motivated to oppose Henon and risk his and Dougherty's ire. There was also no reason to twice refuse; once while bail remained in effect, and once

when Henon began serving his sentence at Fort Dix. Judge Kenney dismissed the complaint initially on state preclusion grounds, the Rooker Feldman doctrine, when none of the four prongs of Rooker Feldman applied as to the individual defendants before joinder of the City of Philadelphia , and three of the four prongs weren't present afterwards. Curiously, the same District Judge had just denied long pending defense motions under Rule 12(b), held under advisement by another judge of the same court. Granting what is tantamount to a protective order for a witness who would likely be asked to explain how he could issue a press release with photographs appearing to be taken at the time and place of Holton's removal from the premises and seizure of his business assets by salvage companies that did not occur until five and a half months later was an abuse of discretion that should shock the conscience of the court. It occurred at a time when City government was under scrutiny. It was not privileged by the Fifth Amendment. All of Henon's relevant testimony was in play once he resigned City employment. Summary judgment presumes that the non-moving party will develop evidence from sources that will sustain the non-moving party's burden of persuasion at trial, such sources to be identified and examined before trial by affidavits, interrogatories or depositions. In cases of official corruption it is more difficult in the absence of cooperating witnesses; the burden of persuasion resting with the non-moving party. Efforts to formulate alternatives have not been successful to date. *See*, Lee H. Rosenthal, *The Summary Judgment Changes That Weren't*, 43 Loy.U.Chi.L.J.(2012).

In *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), the Supreme Court broke new ground overruling *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1986) that required state court litigation to pursue an inverse condemnation claim for an unlawful taking of real property. If the state claim was rejected based upon a dispute of valuation, or if the state court determined there was no compensable taking, the aggrieved landowner could proceed in federal court for an unlawful taking proscribed by the Fifth and Fourteenth Amendments. However the federal action could be subject to a preclusion defense if the State court decision was res judicata or subject to collateral estoppel, called "the San Remo Hotel Trap in the Chief Justice's majority opinion. Here, Holton was challenged by an adverse administrative ruling that was judicially affirmed. Initially, he prevailed in federal court upon a Rule 12(b)(5) defense, but then lost based upon Rule 12(b)(1), finding that the District Court lacked subject matter jurisdiction because of application of the "Rooker Feldman" doctrine. Judgment was entered accordingly dismissing the action for damages. On appeal, the Court of Appeals reversed and remanded to the District Court. The City of Philadelphia, then joined as a co-defendant litigated a summary judgment motion that Holton opposed without comparable resources, and without discovery from the principal actor City Councilman Henon, who was protected from deposition by the City Solicitor. Holton defended by submitting his own detailed affidavit. In 1986, the Supreme Court decided the now famous trilogy, *Matsushita Electric Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574 (1986), *Anderson v.*

Liberty Lobby, Inc, 477 U.S.242(1986) and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), giving a free pass to the District Courts to weigh evidence, otherwise prohibited by a qualitative analysis. Giving the cat catnip thrice tasted was so habit forming that the number of civil jury trials catastrophically declined. See, e.g. "The Irrepressible Myth of Celotex: Reconsidering Summary Judgement Burdens Twenty Years After the Trilogy," Adam N. Steinman, 63 Wash& Lee Law Review, Rosenthal, *id*. at 471. What distinguishes and separates the present case from others is the District Court's twice refusal to defer ruling upon the defendants' motion for summary judgment so that Holton's attorney could ask how did you know with considerable exactness the method, means and circumstances of Holton's removal from the property at 4085 and "4087" Richmond Street, five and a half months before those events actually took place, and with photographs of the participants ? Reasonable jurors might seek answers. What motivated Gatti and Henon to conspire to remove Holton and large quantities of metal salvage, auto and truck parts, closing the Betsy Ross bridge for two hours? The District Court and the Court of Appeals should have been enabled to consider all material facts, and thereby determine whether reasonable jurors could find for the plaintiff on such evidence. How did Henon know on May 18 what did occur on October 13? The answer, of course, is that they planned it. Reasonable jurors would be likely to conclude accordingly.

The anomaly of protected status of the principal actor who devised the plan complained of and carried in effect, on the one hand, and the jurisprudence of

Fed.R.Civ.P. 56 undermines plaintiff's remedy. *See Hempfield Township v. Hapchuck*, 153 Pa.Commw. 173, 620 A.2d 668 (Pa. Commw.1992), *Hanna v. Board Of Adjustment*, 408 Pa.306, 183 A2d 539 (1962) "Bobby" Henon was John Dougherty's ("Johnnie Doc's") amanuensis on the legislative body of City of Philadelphia government. Both were indicted, tried and convicted during the pendency of this lawsuit, alleging Henon's misuse of his powerful status for the ostensible purpose of taking Holton's property by eminent domain. As will be shown, the governmental objective, widening and lengthening Delaware Avenue, a principal north-south roadway, had nothing to do with Holton's property south and west of the proposed extension. It had everything to do with exploitation of the City's eminent domain power in order to divest Holton of property he owned and property he used for access to Delaware Avenue on the east and Richmond Street on the west, thereby capturing a large tract capable of development as residential/commercial real estate with waterfront views, north and east. Henon and Dougherty were indicted by a federal grand jury shortly after this action was brought. The case at bar was initiated following a taking by eminent domain, purportedly of a portion of property owned by Holton north of Lewis Street, designated "Parcel Four". As will be shown Parcel Four was owned by an entirely different entity substituted for the reorganized Penn Central Railroad following Chapter 10 reorganization. Henon had been majority leader of City Council, the legislative branch of Philadelphia government given home rule status in 1951. He was reelected in 2011, and appointed Chair of a committee on .public property and public works,

and a separate committee for the Department of Licenses and Inspections. City Council enacted an ordinance to acquire the real property needed to lengthen Delaware Avenue. In February 2012, twelve years ago, the Philadelphia City Solicitor, ostensibly to implement the ordinance, filed an eminent domain action in Common Pleas Court naming as condemnee, 4085 Richmond Street owned by Holton. Notwithstanding the averments of that action, in which the Philadelphia Department Of Streets, designated 4085 Richmond Street "Parcel Four" of the proposed road expansion, 4085 Richmond Street lies several acres west of the road expansion. Holton's property intersected with Parcel Four owned by American Premier Underwriters ("APU") ,an entity that succeeded Penn Central following the reorganization. The Department of Streets was headed at that time (and the present) by Darrin Gatti, given the additional title of President of the Board of Surveyors of the Streets Department. Gatti is not a surveyor and has never been trained or licensed in that capacity. Philadelphia has its own Board of Surveyors, a separate entity with which Gatti had no connection. 4085 Richmond Street was never implicated in the 2012 Taking, and yet, to this day, It is the designated condemnee of the expansion of Delaware Avenue. APU filed an appearance in the Court of Common Pleas alleging that it was the owner of Parcel Four, rather than Holton. Gatti arranged for APU to deed Parcel Four to Holton.(Something about a horse in Troy.) Holton has not been paid for the City's acquisition of 4085 Richmond Street, including Parcel Four.

The City deposited $40,000 in Court pending resolution of the identity of the condemnee and determination of value. Four years passed before the City Department of License and Inspections began issuing Citations for non -compliance with regulations, including alleged zoning violations following adoption of a new zoning ordinance changing Holton's classification from "LR" (least restrictive) to "I-2" (Industrial), despite that, at all times, Holton had a prior non-conforming use. *See*, *Sullivan v. Zoning Board of Adjustment*, 83 Pa. Commw. 228, 478 A2d 912 (1984). *Richland Township v. Prodex, Inc.*, 160 Pa. Commw. 184, 634 A2d 756 (1993).

Holton and a tenant, Kevin Creedon contested the citations by an appeal to another City agency, the. Board of License and Inspection Review. Gatti testified, falsely, that Holton violated I-2 zoning and therefore lacked a Use Registration Permit, omitting Holton's "grandfathered" status as a prior non-conforming use registrant. Holton's attorney proved that the other asserted violations never existed, or were previously corrected. Holton also sought a TRO (preliminary injunction under Pennsylvania practice) pending the outcome of his administrative appeal. Jefferson and another Law Department attorney appeared for the City at a late afternoon "Emergency" hearing to be presided over by Common Pleas Judge Abbe Fletman. While waiting for Judge Fletman to arrive, Jefferson approached counsel for Holton, Jack Bernard offering to withdraw all charges of regulatory and zoning violations in exchange for a deed to Holton's property alleged to violate City ordinances. The offer was summarily refused. Darrin Gatti was the only witness in opposition. He testified that the

Frankford Creek, an inlet of the Delaware River adjacent to Holton's property was being polluted by run off from Holton's metal salvage business. On that testimony, not readily refuted at the time, the court denied preliminary relief. No dispositive action was taken, however. Holton's attorney, Mr. Bernard, contacted the Department of Environmental Protection, formerly Environmental Resources ("Pa.DEP) who tested the Frankford Creek, water, found no pollution, and advised that the main source of Philadelphia drinking water was the Schuylkill River, rather than the Delaware River.) After the Board of Licenses and Inspection Review denied Holton's administrative appeal, he appealed to the Court of Common Pleas. Briefs were submitted. Mr. Jefferson appeared for the City. He withdrew all regulatory violations previously alleged, in exchange for a "plea bargain" where Holton admitted that he lacked a Use Registration Permit, issued if the possessor either has comp[lied with zoning or obtained a variance. Holton did not have a Use Registration Permit; however he was in lawful possession with a prior non-conforming use. Meanwhile, Gatti had changed the lot lines, moved Holton's parcel further north, with a new address. He was refused a Use Registration Permit. The Court was required and did affirm the determination of the Board. Thirty One days later L&I, Gatti, Henon and police officers physically removed Holton and his inventory from non-owned longtime occupied City property known as "4087 Richmond Street", an address Jefferson admitted that appears nowhere else on City records or maps. That address was created for purpose of this litigation. It is called the "Frankford Creek Right Of

Way", and is surrounded north, east and west by Holton's property. All three parcels, 4085 Richmond Street, 4087 Richmond Street, and Holton's parcel south and east of 4087 Richmond Street were owned by the Pennsylvania and later Penn Central Railroad. In 1951, the same year Home Rule took effect, the City condemned the Frankford Creek Right of Way lying in between what later became Holton's two parcels, for recreational purposes which would have landlocked Holton and his predecessors, but for an easement of necessity to access a public road, Richmond Street. *See*, *Bartkowski v. Ramondo*, 656 Pa.51, 183 A.3d 1076 (Pa.2018), *Ogden v. Grove*, 38 Pa.487, 491 (1861), *Olszewski v. Parry*, 2022 Pa.Super 165 (Super 2022).

On October 13, 2018, the City of Philadelphia removed Holton from 4087 Richmond Street. Exactly 31 days had passed since the Court affirmed the Board of License Inspection Review. Five and one half months earlier, May 22, 2018, Councilman Henon issued a press release that unerringly recounts the history of the property, legal proceedings culminating in affirmance by the "Equity Court", and enforcement action yet to occur until five and a half months later, with names and photographs of Henon, Gatti and the Police Lieutenant who was in charge five and a half months later with photographs. As the saying goes, if Lincoln Steffens were alive, he'd turn over in his grave.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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