No. 24-

IN THE

Supreme Court of the United States

JOHN R. STENSRUD, MARIA B. STENSRUD,

Petitioners,

v.

ROCHESTER GENESEE REGIONAL TRANSPORTATION AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

28 U.S.C. §1738, the "Full Faith and Credit" statute, can result in *res judicata*. This Court, among others, has recognized exceptions to claim preclusion, particularly where it results in inequity. In Knick v. Township of Scott, Pennsylvania, 588 U.S. 180 (2019), this Court overruled the state litigation requirement of Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985), to avoid the "preclusion trap" that resulted, as an unintended consequence of Williamson. Knick, 588 U.S. at 197.

Here, petitioners commenced this federal action in 2019 promptly after Knick, but the state court litigation brought by the condemnor in 2015 was then still pending, and the Stensruds were unable to unilaterally discontinue the state case in favor of the federal action. Consequently, they were forced to trial in state court on a sharply restricted evidentiary record, in which the only valuation report that complied with federal law was excluded, based on the failure to follow federal law. After the state trial, the District Court, affirmed by the Second Circuit, dismissed this action based on *res judicata*.

The questions presented are whether this Court should recognize an exception to *res judicata* where:

1. post-Knick condemnees are denied a federal forum because they remain caught in a preclusion trap, due to the mere arbitrariness of timing?
2. a state court's failure to follow federal law caused the exclusion from evidence of the only expert valuation report that: (1) complies with federal law, and (2) could yield just compensation?

PARTIES TO THE PROCEEDING

Petitioners, who were plaintiffs in the district court, are the condemnees, John R. Stensrud and Maria B. Stensrud ("the Stensruds").

Respondent, which was the defendant in the district court, is the condemnor, Rochester Genesee Regional Transportation Authority ("RGRTA").

RELATED PROCEEDINGS

RGRTA v. Stensrud, 173 A.D.3d 1699 (4th Dep't 2019), Appellate Division, N.Y. State Supreme Court, CA 18–00647, Judgment entered June 7, 2019.

Stensrud v. RGRTA, 507 F.Supp.3d 444 (WDNY 2020), United States District Court for the Western District of New York, 6:19-CV-06753 (EAW), Judgment entered December 16, 2020.

Stensrud v. RGRTA, 669 F.Supp.3d 186 (WDNY 2020), United States District Court for the Western District of New York, 6:19-CV-06753 (EAW), Judgment entered April 14, 2023.

Stensrud v. RGRTA, 2024 WL 2104604 (2d Cir. 2024) U.S. Court of Appeals for the Second Circuit, No. 23-765, Judgment entered May 10, 2024.

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JURISDICTION

The Court of Appeals' Summary Order and Judgment was entered on May 10, 2024 (Dkt. 72). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1738: The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT

This Court's creation, in Knick, of an immediate and direct path to federal court when property is taken by eminent domain was a welcome development for condemnees, who previously were forced, first, to litigate in state court. Unavoidably however, there are some condemnees who – purely through the arbitrariness of timing – were nonetheless caught in the very preclusion trap, San Remo, 545 U.S. at 338, 347-48, that Knick seeks to avoid. This is such a case.

John and Maria Stensrud, small but successful, long-term investors in income properties, were required to spend years litigating in state court. Over these many years of protracted litigation in both state and federal court, the Stensruds ultimately prevailed on most of their main claims, but the relentless opposition of, and obstacles imposed by, RGRTA – a large, powerful public authority – made this case last far too long, and cost far too much.

Worse yet, the Stensruds have been denied Knick's central promise: a federal forum. They were also denied the opportunity to present their principal expert's testimony, whose report is the only one in this case that complies with federal law. By granting certiorari, this Court can afford the Stensruds and other, similarly situated condemnees, their day in federal court, so that at long last, they can pursue their rights under federal law.

A. Background

The Stensruds are long-term real estate investors, who purchase properties, renovate them, and hold them for long periods of time, recognizing that their up-front renovation costs result in more substantial

net operating income (NOI): through higher revenue, and lower operating costs. (App. D, 44a).

In early June of 2011, the Stensruds purchased Chamberlain, in the City of Rochester, New York. After purchasing it, the Stensruds significantly renovated the Property, adding a third-floor addition and creating a four-unit apartment building, each unit having either three, or four bedroom apartments. (App. D, 45a). Their investment strategy was to renovate the property with higher-end appliances and materials in order to attract stable tenants willing to pay higher than average market rent, and pay all or most of the utility costs, for the area in which the property was located. (App. D, 45a).

During the renovations in mid-2011, Dr. Stensrud became aware that RGRTA may condemn the property, but he also knew, from experience, that some eminent domain projects do not come to fruition. (App. D, 45a). Because he had invested a significant amount of funds into renovating the Property, and had entered into various contracts, he moved forward with the renovations. Dr. Stensrud's decision was also based on conversations with RGRTA's CEO, William Carpenter, in the summer of 2012, wherein he informed Dr. Stensrud that RGRTA had not yet committed to acquiring the Property. (App. D, 46a).

Dr. Stensrud completed most of the renovations by April of 2012, having invested over $570,000, received a partial certificate of occupancy and began accepting tenants. The property was fully rented in late 2012. (App. D, 46a).

In 2013 RGRTA – with substantial federal funds – began the initial phases of the Campus Improvement Project (the "Project") to expand its existing campus located at 1372 East Main Street, which

included plans to take Chamberlain, through eminent domain. (App. D, 46a-47a). In May of 2014 RGRTA received an appraisal report for Chamberlain that - containing no Income Capitalization - valued the Property at $255,000. (App. D, 47a). Based on that, RGRTA decided that it was not economically feasible to acquire Chamberlain, so on May 30, 2014 RGRTA informed the Stensruds that it would not acquire the property. (App. D, 47a).

However, in 2015, RGRTA reconsidered its prior decision not to acquire Chamberlain. (App. D, 47a). On May 14, 2015 RGRTA offered the Stensruds $255,000 for Chamberlain. Because it contained no Income Capitalization and was less than half the amount that they had invested into the Property, the Stenruds declined the offer. (App. D, 47a). On August 13, 2015 RGRTA acquired Petitioners' property by eminent domain. (App. D, 47a).

Some six months later, RGRTA paid the Stensruds $292,000 as advance payment, based on an updated appraisal. (App. D, 48a). On December 30, 2015 the Stensruds filed a claim under the New York EDPL – the only forum then available to them. Thereafter, during a settlement conference with the court, RGRTA offered to pay $420,000. (App. D, 48a).

Six years later, on April 14, 2022, RGRTA paid the Stensruds an additional $174,870.58, because they were forced to do so through this federal action, in which RGRTA abandoned its appraiser from state court, and hired a replacement. (App. D, 49a). That brought the total compensation paid to the Stensruds – as of that time – to $466,870.58. (App. D, 49a).

Mr. Rynne characterized Chamberlain as "one of the more unique four-family properties [he] ever looked at" due to the number of bedrooms and the size

of the apartments contained therein. (App. D, 50a). As the property had units with three or four bedrooms, it could command greater rent. While acknowledging that other multi-family units are regularly sold on the open market, Mr. Rynne recognized that Chamberlain was unique, and determined that its highest and best use was an income investment property: a four-family commercial apartment building. (App. D, 50a).

B. Procedural History

After RGRTA acquired Chamberlain on August 13, 2015, the Stensruds filed a claim for additional compensation in state court – as part of the proceeding commenced by RGRTA – as the Stensruds were then required to do, under the law at the time. The Stensruds had an expert report co-authored by finance expert Ralph Eisenmann, which was the only Income Capitalization in this case, and the only valuation that complied with federal law, as set forth in the Uniform Appraisal Standards for Federal Land Acquisitions (the "Yellow Book"). The Stensruds also engaged Mr. Rynne, a market appraiser who prepared a conventional appraisal report with various approaches to value.

Because it was based on the capitalization of actual net income, Mr. Eisenmann's report concluded a substantially higher value than the other approaches, which changed the Stensruds' actual, income and expense data to the lower, performance of the "market."

Relying on a state court regulation designed to prevent evidentiary surprises at trial, 22 NYCRR §202.61(e), RGRTA moved to strike Mr. Eisenmann's report, which the original state trial court judge, Hon.

Thomas A. Stander, granted. Justice Stander also granted RGRTA's motion to strike Mr. Rynne's "Investment Value" approach, which used more of the actual, performance data, but still contained some adjustments to market estimates.

In mid-2019, the Appellate Division, Fourth Department modified Justice Stander's Order, by reinstating the Investment Value, and affirming the striking of Mr. Eisenmann's report, based on regulation 202.61(e) – and the failure to follow federal law. RGRTA v. Stensrud, 173 A.D.3d 1699 (4th Dep't 2019).

At the same time, this Court decided Knick, thereby opening the door to federal court for condemnees such as the Stensruds, without first having to endure local and state condemnation proceedings. The Stensruds then promptly commenced this federal action in the United States District Court for the Western District of New York, in which there was no reasonable question regarding the admissibility of Mr. Eisenmann's report. FRE 701, 702.

As it had *ab initio* in the state court action, RGRTA again made a dispositive motion to dismiss, which Hon. Elizabeth A. Wolford denied in its entirety. Stensrud v. RGRTA, 507 F.Supp.3d 444 (WDNY 2020).

Also, during this federal case, RGRTA abandoned the appraiser it had employed throughout the state court action, in favor of a new appraiser, who opined that the Property was worth substantially more – approximately $163,000 – than RGRTA's prior appraiser had. RGRTA then supplemented its advance payment accordingly. (App. D, 49a).

The Stensruds prosecuted their federal action expeditiously, so that it was ready for trial in 2022, at

which time the parties made cross-motions for summary judgment and other relief. (Dkt. 79-82).

In response to the Stensruds' expeditious prosecution of their federal action, RGRTA then moved to push the long-pending (and long-dormant) state case to trial. The Stensruds employed all available means in an effort to discontinue the state proceeding in favor of the federal litigation, but they were unable to do so unilaterally, RGRTA refused to consent, and both the state and federal trial courts rejected the Stensruds' requests that the federal action be allowed to proceed in place of the state case. (Dkt. 83-85).

Consequently, the Stensruds were forced to trial in state court in 2022, after which Hon. Daniel J. Doyle, having replaced the now-retired Justice Stander, found – without the benefit of the still-excluded Eisenmann report – that the Property's value, as of the 2015 taking date, was $509,000. (App. A, 3a).

Further, due to RGRTA's grossly inadequate advance payment and its other, protracted, litigious resistance to valuing the Property based on its net income, Justice Doyle allowed the Stensruds to apply, pursuant to EDPL §701, for an additional allowance.

After submissions and oral argument, Justice Doyle awarded the Stensruds an additional allowance of $264,904.69, comprised of costs that the Stensruds incurred in state court. (App. C, 40a). Justice Doyle denied the Stensruds' request for reimbursement from the federal case, though it was that case that forced RGRTA to hire a new appraiser, resulting in a higher value, albeit still much lower than the Stensruds' experts' opinions, and even than Justice Doyle's decision after trial, which lacked the benefit of Mr. Eisenmann's report. RGRTA v. Stensrud, 173 A.D.3d at 1701-02.

Thereafter: (1) we exhausted our state appeals, so that our renewed motion for leave to the New York Court of Appeals would be ripe (that application remains pending), and (2) Judge Wolford, as affirmed by the Second Circuit, dismissed our federal action on *res judicata* grounds, resulting in this petition.

REASONS FOR GRANTING THE PETITION

A. For Condemnees Such As The Stensruds, Who Remain Caught – Purely Through The Arbitrariness Of Timing – In The Preclusion Trap, Knick's Constitutional Promise Remains Unfulfilled.

In Knick, this Court aptly stated that "the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court." Knick, 588 U.S. at 185. That is exactly what happened here, and it is why this Court should identify an exception to *res judicata*, so that the Stensruds and other, similarly situated condemnees, may – at long last – have their day in federal court, applying federal law.

Understanding that this Court has rarely recognized exceptions to the application of *res judicata* from state court determinations, Knick, and the bedrock right to just compensation under the Fifth Amendment justify that exception. This is especially so here, where the state deprivation has been so profound, based on the failure to follow federal law, and because there is such a dramatic difference in value – and thus, in just compensation – between state and federal law.

This Court's identification of exceptions to *res judicata* in state cases has been limited mainly to

Pullman abstention, 312 U.S. 496 (1941), *e.g.*, San Remo, 545 U.S. at 339-40, and has generally held that that a state court judgment has the same claim preclusive effect in federal court that it would in state court Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75 (1984) (Ohio law). Significantly in Migra, the "petitioner could have obtained a federal forum for her federal claim by litigating it first in a federal court." Migra, 465 U.S. at 84-85. That contrasts sharply with the case at bar, where the Stensruds could only bring their claim in state court initially, in 2015, four years before Knick. Williamson, 473 U.S. at 200. Further, though we filed this federal action in 2019 promptly after Knick, we were unable to unilaterally discontinue the state case in favor of this federal action, and so were forced to trial in state court in 2022. (Dkt. 83-85).

Simply stated: if condemnees' right to a federal forum is sufficiently important to make it available as soon as their property is taken – and it clearly is, Knick, 588 U.S. at 185 – then that constitutional right is also sufficiently important that it should not be lost merely to an arbitrary accident of timing. We thus ask this Court to recognize an exception to *res judicata* for those condemnees who – due only to the unavoidable arbitrariness of timing – have been denied their day in federal court, even after Knick.

B. Federal Law Governs This Case, and it Has Yet to be Applied Herein. Further, Ongoing Failures to Recognize Federal Law Threaten the Constitutional Rights of Current and Future Condemnees.

As stated above, the Stensruds proceeded in federal court as soon as they were allowed to do so, by Knick. The expert valuation report of Mr. Eisenmann

that was wrongly excluded from evidence in state court, is the only valuation report herein that complies with federal law – valuing Chamberlain in its highest and best use, as a commercial apartment rental property, through Yellow Book Income Capitalization. As this Court stated in the landmark case of U.S. v. Miller, 317 U.S. 369 (1943):

> We need not determine what is the local law, for the federal statutes upon which reliance is placed require only that, in condemnation proceedings, a federal court shall adopt the forms and methods of procedure afforded by the law of the State in which the court sits. They do not, and could not, affect questions of substantive right,—such as the measure of compensation,—grounded upon the Constitution of the United States.

U.S. v. Miller, 317 U.S. at 379-80.

Similarly, the Yellow Book states that "a finding on the value of a [property interest] that 'is derived from the application of an improper legal standard to the facts' must be remanded for new factual findings for application of the correct legal standard." (Dkt. 81, Doc. 2 [Ex. A], §4.1.2, p. 90).

That is precisely what occurred, here: failing to follow federal law, the state trial court erroneously excluded relevant, expert valuation evidence that was essential for just compensation. That court should have invoked one or more Jurisdictional Exceptions to the minimum state standards of the Uniform Standards for Professional Appraisal Practice (USPAP), so that the only valuation report that complies with federal law could be considered at a state court trial. "In certain instances, it is necessary to invoke USPAP's

Jurisdictional Exception Rule to comply with federal law relating to the valuation of real estate for just compensation purposes." (Dkt. 81, Doc. 2 [Ex. A], §1.2.7.2, p. 14).

As just one more example: the new (replacement) appraiser that the condemnor offered in federal court could not comply with the federal requirement of an in-person inspection, of a property that the condemnor had demolished years before.

> In federal acquisitions, the purpose of an appraisal—whether prepared for the government or a landowner—is to develop an opinion of market value that can be used to determine just compensation under federal law. As a result, appraisals in federal acquisitions face different—and often more rigorous— valuation problems and standards than those typically encountered in appraisals for other purposes… . These Standards set forth the guiding principles, legal requirements, and practical implications for the appraisal of property in all types of federal acquisitions.

Dkt. 81, Doc. 2 [Ex. A], §0.1, p. 3.

> While these Standards are not law in and of themselves, they are based on, and describe, federal law (including case law, legislation, administrative rules, and regulations). These Standards have also been specifically incorporated by reference into a number of statutes and regulations, including the regulations that implement the Uniform Act. It is clear that the deviations between the requirements of these Standards and USPAP noted below fall

> under USPAP's Jurisdictional Exception Rule; the legal authority justifying these exceptions consists of these Standards and the federal case law, legislation, and federal regulations upon which these Standards are based.

Dkt. 81, Doc. 2 [Ex. A], §1.2.7.2, pp. 14-15 (internal parens in orig.).

The only valuation that complied with federal law was excluded in state court due to failure to follow federal law: the mandated federal appraisal standard – requiring Jurisdictional Exceptions and/or special instructions to ensure that appropriate approaches to value (Income Capitalization and Cost) were used, given the asset's income producing nature and the recency of massive capital investments – was not used. The state regulation used to exclude Mr. Eisenmann's report would not even have been at issue, had federal requirements been followed, including Jurisdictional Exceptions under USPAP.

Lacking a viable, practical way of avoiding a state court trial on a sharply constricted record, the Stensruds were forced to trial there, which provided the (purported) premise for the District Court's dismissal of this federal action, based on *res judicata*. This case still cries out for just compensation under federal law.

This grievously harms not just the Stensruds, who have lost hundreds of thousands of dollars, but also all of those present and future condemnees who, when confronted by the overwhelming governmental power of condemnors, often lack the wherewithal to avail themselves of their only hope of constitutionally guaranteed just compensation: federal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: August 8, 2024

Respectfully submitted,
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APPENDIX

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APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED MAY 10, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 23-765

JOHN R. STENSRUD, MARIA B. STENSRUD,

Plaintiffs-Appellants,

v.

ROCHESTER GENESEE REGIONAL TRANSPORTATION AUTHORITY,

Defendant-Appellee.

May 10, 2024, Decided

PRESENT: DENNIS JACOBS, ROBERT D. SACK, RICHARD J. SULLIVAN, *Circuit Judges*.

SUMMARY ORDER

Appeal from a judgment of the United States District Court for the Western District of New York. (Elizabeth A. Wolford, *Chief Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

the April 17, 2023 judgment of the district court is **AFFIRMED**.

John and Maria Stensrud appeal from the district court's grant of summary judgment in favor of Rochester Genesee Regional Transportation Authority ("RGRTA") on their claims brought under 42 U.S.C. § 1983 and New York law alleging that RGRTA took their property without just compensation, in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution, and the constitution and laws of New York. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to resolve this case.

In August 2015, RGRTA used its eminent-domain authority to take a multifamily residential property (the "Property") from the Stensruds to make way for a planned expansion of RGRTA's office campus in Rochester, New York. After this taking, the Stensruds brought a claim in state court seeking damages in the amount of $1,386,257 in addition to other "consequential damages." J. App'x at 996. While the Stensruds' state-court claim was pending, the Supreme Court decided *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180, 182, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019), which overruled its prior holding in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985), that "a property owner

whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights – and thus cannot bring a federal takings claim in federal court – until a state court has denied his claim for just compensation under state law." *Knick*, 588 U.S. at 184 (describing holding in *Williamson County*). With *Williamson County* no longer a bar, the Stensruds brought this action in federal court, asserting claims similar to the ones they had brought in state court. The Stensruds did not discontinue the state-court action, purportedly because they were unable to do so unilaterally and because RGRTA would not agree to a "mutual discontinuance." Stensrud Br. at 16.

While the federal case was pending, the state court held a bench trial and entered judgment awarding the Stensruds $509,000 plus accrued interest of nine percent for the taking of the Property. In light of the state court's judgment, the district court granted summary judgment to RGRTA on the ground that all of the Stensruds' claims in their federal action were barred by *res judicata*. This appeal followed.

We review *de novo* a district court's grant of summary judgment, including its "application of the principles of *res judicata*." *Legnani v. Alitalia Linee Aeree Italiane, S.p.A.*, 400 F.3d 139, 141 (2d Cir. 2005). "Federal courts are required to give preclusive effect to state-court judgments whenever the courts of the state from which

the judgments emerged would do so." *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 398 (2d Cir. 2022) (alterations and internal quotation marks omitted); *see* 28 U.S.C. § 1738 (Full Faith and Credit Act). This requirement applies equally in takings actions brought under section 1983 like the Stensruds'. *See San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 343-44, 347-48, 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005); *Allen v. McCurry*, 449 U.S. 90, 96-105, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). Accordingly, we apply New York law to determine the preclusive effect of the state-court judgment in the Stensruds' prior action.

Under New York law, *res judicata* (also known as claim preclusion) "bars successive litigation based upon the same transaction or series of connected transactions" if (1) "there is a judgment on the merits rendered by a court of competent jurisdiction," and (2) "the party against whom the doctrine is invoked was a party to the previous action." *People ex rel. Spitzer v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 122, 894 N.E.2d 1, 863 N.Y.S.2d 615 (2008) (internal quotation marks omitted). "New York employs a transactional approach to claim preclusion, under which the claim preclusion rule extends beyond attempts to relitigate identical claims to *all other claims arising out of the same transaction or series of transactions*." *Simmons v. Trans Express Inc.*, 16 F.4th 357, 360 (2d Cir. 2021) (alterations and internal quotation marks omitted). Under this approach, "once a claim is brought to

a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." *Josey v. Goord*, 9 N.Y.3d 386, 389-90, 880 N.E.2d 18, 849 N.Y.S.2d 497 (2007) (internal quotation marks omitted). Applying these principles, the district court concluded that the Stensruds' federal-court claims were barred by *res judicata*, since there was "no dispute that the claims asserted in the [federal] action ar[o]se out of the same transaction or series of transactions as the claim resolved by the state trial court's decision and judgment – namely, the taking of the Property by RGRTA in August of 2015." Sp. App'x at 7.

On appeal, the Stensruds argue that the district court erred for two principal reasons. First, they contend that *res judicata* does not apply because the state court "did not have the power to award the full measure of relief sought in the later litigation" due to a New York regulation that apparently precluded use of the Stensruds' preferred real-estate-valuation methodology. Stensrud Br. at 22 (quoting *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994)); *see id.* at 14, 23. Second, the Stensruds argue that *res judicata* does not – or should not – apply because, after the Supreme Court's holding in *Knick v. Township of Scott*, they were not required to bring their claim in state court at all. We are not persuaded by either argument.

For starters, *Burgos* is inapposite. In that case, we held that a previously litigated state habeas action did

not bar a subsequent damages action under section 1983, since "a New York State court determining a petition for habeas relief does not have the authority to award damages." *Burgos*, 14 F.3d at 791. Here, by contrast, the New York court clearly had authority to award damages to the Stensruds on their takings claim – and it did. To the extent the Stensruds think the state court's damages award was erroneous, their remedy lies in direct appeal to a higher state court and, eventually, petition for review to the United States Supreme Court. Nothing in *Burgos* gives state-court litigants who are dissatisfied with their damages awards the right to a do-over in federal district court.

The Stensruds' second argument, that the Supreme Court's decision in *Knick* allows their federal-court action to proceed, is equally unavailing. In *Knick*, the Supreme Court overruled the state-court exhaustion requirement that *Williamson County* had effectively established, holding instead that a property owner asserting a Takings Clause claim need not seek just compensation in state court before bringing his claim in federal court. *Knick*, 588 U.S. at 185. But as we have previously explained, when a plaintiff *has* in fact brought his claims in state court and litigated those claims to a judgment, the district court is "required by federal law to apply collateral estoppel" – and *res judicata* – "to issues decided in those proceedings," notwithstanding *Knick*. *Morabito v. New York*, 803 F. App'x 463, 468 (2d Cir. 2020); *see San Remo Hotel*, 545

U.S. at 336; 28 U.S.C. § 1738. We are not alone in reaching this conclusion. *See Tejas Motel, L.L.C. v. City of Mesquite ex rel. Bd. of Adjustment*, 63 F.4th 323, 334 (5th Cir. 2023) ("[N]othing in *Knick* nullifies long-settled principles of *res judicata*."); *Ocean Palm Golf Club P'ship v. City of Flagler Beach*, 861 F. App'x 368, 371 (11th Cir. 2021) ("The *Knick* Court did not overrule or otherwise modify its precedent in *San Remo*."). The Stensruds' attempts to distinguish these cases are unpersuasive.

"One can sympathize with [the Stensruds'] procedural plight," *Tejas Motel, L.L.C.*, 63 F.4th at 335, but once the state court's judgment issued, their claims in this case were barred by *res judicata* as defined under New York law. *See San Remo Hotel*, 545 U.S. at 336. The district court therefore did not err in granting summary judgment to the defendants.

We have considered Plaintiffs' remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX B — DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK, FILED APRIL 14, 2023

United States District Court
for the Western District of New York

6:19-CV-06753 EAW

JOHN R. STENSRUD
AND MARIA B. STENSRUD,

Plaintiffs,

v.

ROCHESTER GENESEE REGIONAL
TRANSPORTATION AUTHORITY,

Defendant.

April 14, 2023, Decided;
April 14, 2023, Filed

DECISION AND ORDER

INTRODUCTION

Plaintiffs John R. Stensrud and Maria B. Stensrud (collectively "Plaintiffs") seek monetary damages pursuant to 42 U.S.C. § 1983 and New York State law based on defendant Rochester Genesee Regional Transportation

Authority's ("RGRTA" or "Defendant") taking by eminent domain of property located at 36-38 Chamberlain Street in Rochester, New York (the "Property"). (Dkt. 58). Prior to the commencement of the instant action, Plaintiffs pursued a claim for additional compensation related to this taking in New York State Supreme Court, Monroe County (the "state trial court").

A bench trial was held in the state trial court on June 6, 2022, and on September 26, 2022, the state trial court issued a decision and order awarding Plaintiffs $509,000 as just compensation for the taking of the Property. (Dkt. 98-6). Defendant now moves for summary judgment on the basis of res judicata. (Dkt. 98). For the reasons that follow, Defendant's motion is granted.

BACKGROUND

The following facts are taken from Defendant's statement of material facts not in dispute (Dkt. 98-1), Plaintiffs' response thereto (Dkt. 99-4), and the exhibits submitted by the parties. The Court has noted any relevant factual disputes.

RGRTA is a New York public authority vested with the power of eminent domain by § 1299-ii of the New York State Public Authorities Law. (Dkt. 98-1 at ¶ 1; Dkt 99-4 at ¶ 1). In 2013, RGRTA received final environmental approval and permission to proceed with its Main Street Campus Improvement Project (the "Project"). (Dkt. 98-1 at ¶¶ 2-3; Dkt. 99-4 at ¶¶ 2-3). RGRTA thereafter advised affected property owners about the Project and

anticipated property acquisitions. (Dkt. 98-1 at ¶ 4; Dkt. 99-4 at ¶ 4).

Plaintiffs owned the Property in 2013, having purchased it in 2011. (Dkt. 98-1 at ¶¶ 8-9; Dkt. 99-4 at ¶¶ 8-9). The Property was one of the properties identified by RGRTA to be acquired as part of the Project. (Dkt. 98-1 at ¶ 8; Dkt. 99-4 at ¶ 8). Notices regarding RGRTA's intended acquisition of the Property were sent to Plaintiffs in April and May of 2013. (Dkt. 98-1 at ¶¶ 16-17; Dkt. 99-4 at ¶¶ 16-17).

On April 30, 2014, RGRTA received a "review appraisal" of the Property. (Dkt. 98-1 at ¶ 21; Dkt. 99-4 at ¶ 21). It then modified its plans and decided not to acquire the Property, communicating that decision to Mr. Stensrud by letter dated June 2, 2014. (Dkt. 98-1 at ¶¶ 22-23; Dkt. 99-4 at ¶¶ 22-23). However, in 2015, RGRTA reconsidered its decision not to acquire the Property, and determined that it would move forward with the acquisition. (Dkt. 98-1 at ¶ 24; Dkt. 99-4 at ¶ 24). On May 14, 2015, RGRTA met with Mr. Stensrud and informed him that RGRTA had elected to move forward with the acquisition of the Property by eminent domain. (Dkt. 98-1 at ¶ 25; Dkt. 99-4 at ¶ 25). At that time, RGRTA offered Mr. Stensrud $255,000 as compensation for the Property. (Dkt. 98-1 at ¶ 25; Dkt. 99-4 at ¶ 25).

On June 23, 2025, RGRTA commenced proceedings in the state trial court to acquire the Property. (Dkt. 98-1 at ¶ 26; Dkt. 99-4 at ¶ 26). The state trial court granted RGRTA permission to file its acquisition map for

the Property by order entered on August 10, 2015, and RGRTA filed said acquisition map on August 13, 2015, thereby becoming the owner of the Property. (Dkt. 98-1 at ¶¶ 27-28; Dkt. 99-4 at ¶¶ 27-28). On or around November 10, 2015, RGRTA paid Plaintiffs compensation in the amount of $292,000, which was the value of the highest appraisal RGRTA had received for the Property at that time. (Dkt. 98-1 at ¶ 30; Dkt. 99-4 at ¶ 30). Plaintiffs take the position that the appraisal RGRTA relied upon was "severely infirm and inadequate, and that RGRTA knew or should have known that." (Dkt. 99-4 at ¶ 30). Plaintiffs filed a claim for additional compensation in the state trial court on December 30, 2015. (Dkt. 98-1 at ¶ 31; Dkt. 99-4 at ¶ 31).

Plaintiffs commenced the instant litigation on October 9, 2019. (Dkt. 1). The operative pleading is the amended complaint filed on September 29, 2021. (Dkt. 58). In connection with this action, RGRTA retained licensed New York State real estate appraiser Ken Gardener to act as an expert witness. (Dkt. 98-1 at ¶ 33; Dkt. 99-4 at ¶ 33). Mr. Gardener appraised the value of the Property as it existed in 2015 as $418,000, and on April 14, 2022, RGRTA paid Plaintiffs an additional $174,800. (Dkt. 98-1 at ¶¶ 33-34; Dkt. 99-4 at ¶¶ 33-34).

A bench trial was held in the state trial court beginning on June 6, 2022. (Dkt. 98-1 at ¶ 39; Dkt. 99-4 at ¶ 39). On September 26, 2022, the state trial court issued a decision and order awarding Plaintiffs $509,000 as just compensation for the taking of the Property, plus all accrued interest at 9% per annum. (Dkt. 98-1 at ¶ 44;

Dkt. 99-4 at ¶ 44). A second amended judgment was filed in the state trial court on December 13, 2022, and RGRTA has satisfied the second amended judgment in its entirety. (Dkt. 98-1 at ¶¶ 45-46; Dkt. 99-4 at ¶¶ 45-46). Plaintiffs and RGRTA have appealed from the second amended judgment. (Dkt. 98-3 at ¶ 16).

RGRTA filed the instant motion for summary judgment on February 7, 2023. (Dkt. 98).[1] Plaintiffs filed their opposition on March 3, 2023 (Dkt. 99), and RGRTA filed its reply on March 16, 2023 (Dkt. 100). The Court heard oral argument on April 10, 2023, at which time it reserved decision. (Dkt. 102).

DISCUSSION

The sole issue before the Court at this time is whether Plaintiffs' claims in this action are barred, in whole or in part, as a result of the state trial court's decision and judgment. Federal courts are required "to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 467, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982) (citing 28 U.S.C. § 1738); *see also Malcolm v. Honeoye Falls-Lima Cent. Sch. Dist.*, 629 F. App'x 87, 88 (2d Cir. 2015) ("It is axiomatic that a federal

1. On January 10, 2023, the Court denied without prejudice a prior motion for summary judgment filed by RGRTA, as well as the parties' competing motions to preclude expert testimony, in order to first resolve the matter of the preclusive effect, if any, of the state trial court's decision on the instant matter. (*See* Dkt. 97).

court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." (quotation omitted)). This rule applies with full force in § 1983 actions asserting violations of constitutional rights. *See Allen v. McCurry*, 449 U.S. 90, 105, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980); *see also Leather v. Eyck*, 180 F.3d 420, 424 (2d Cir. 1999) ("In a federal § 1983 suit, the same preclusive effect is given to a previous state court proceeding as would be given to that proceeding in the courts of the State in which the judgment was rendered.").

"The term *res judicata*, which means essentially that the matter in controversy has already been adjudicated, encompasses two significantly different doctrines: claim preclusion and issue preclusion," *Marcel Fashions Grp., Inc. v. Lucky Brand Dungarees*, Inc., 779 F.3d 102, 107 (2d Cir. 2015). New York recognizes both claim preclusion and issue preclusion (also known as collateral estoppel). *Leather*, 180 F.3d at 424. "Under the doctrine of res judicata, or claim preclusion, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Simmons v. Trans Express Inc.*, 16 F.4th 357, 360 (2d Cir. 2021) (quotation and alteration omitted). "Under New York law, collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party whether or not the tribunals or causes of action are the same. New York courts apply collateral estoppel, or issue preclusion, if the issue in the second action is identical to an issue which was

raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in the earlier action." *LaFleur v. Whitman*, 300 F.3d 256, 271 (2d Cir. 2002) (quotations, alteration, and citations omitted).

"In New York, res judicata, or claim preclusion, bars successive litigation based upon the same transaction or series of connected transactions if: (i) there is a judgment on the merits rendered by a court of competent jurisdiction, and (ii) the party against whom the doctrine is invoked was a party to the previous action, or in privity with a party who was[.]" *People ex rel. Spitzer v. Applied Card Systems, Inc.*, 11 N.Y.3d 105, 122, 894 N.E.2d 1, 863 N.Y.S.2d 615 (2005) (citations and quotation omitted). "New York employs a transactional approach to claim preclusion, under which the claim preclusion rule extends beyond attempts to relitigate identical claims to all other claims arising out of the same transaction or series of transactions." *Simmons*, 16 F.4th at 361 (quotation and alterations omitted). In applying the transactional approach, "New York courts analyze whether the claims turn on facts that are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* (quotation omitted). The pendency of an appeal does not deprive a judgment of preclusive effect under New York law. *Papapietro v. Clott*, No. 22-CV-1318 RPK VMS, 2023 U.S. Dist. LEXIS 56804, 2023 WL 2731687, at *5 (E.D.N.Y. Mar. 31, 2023); *see also DiSorbo v. Hoy*, 343 F.3d 172, 183 (2d Cir. 2003).

Appendix B

In this case, Plaintiffs' claim decided by the state trial court was for direct and consequential damages arising out of "RGRTA's permanent acquisition on or about August 13, 2015 by eminent domain of 36-38 Chamberlain Street, Rochester, New York[.]" (Dkt. 98-6). The claims asserted before this Court are: (1) direct damages flowing from RGRTA having taken "plaintiffs' property without paying just compensation" and having "then actively and persistently continued to resist paying just compensation"; (2) "substantial and continuing additional damages" flowing from those same "actions and failures"; and (3) "additional damages" flowing from these same "actions and failures" pursuant to "[t]he New York Constitution and state law[.]" (Dkt. 58 at ¶¶ 51-62).

There is no dispute that the claims asserted in the instant action arise out of the same transaction or series of transactions as the claim resolved by the state trial court's decision and judgment—namely, the taking of the Property by RGRTA in August of 2015. Nor is there any dispute that the claims could have heard by the state trial court. Indeed, Plaintiffs' counsel conceded as much at oral argument. Further, Plaintiffs and RGRTA were parties to the state trial court proceeding. As such, Plaintiffs' claims in this action appear to be barred by claim preclusion under New York law. The question thus becomes whether there is an applicable exception to the doctrine of claim preclusion.

Plaintiffs raise several arguments as to why their claims are not precluded under New York law, each of which the Court has considered and finds unpersuasive.

Plaintiffs contend that their "claims could not be fully heard in state court due to the interpretation of a state regulation." (Dkt. 99-2 at 10). In particular, citing cases dealing with New York's law on issue preclusion, Plaintiffs argue that the state trial court did not consider the issue of "true Income Capitalization" and that they "clearly did not have a full and fair opportunity to litigate that issue in state court." (*Id.*).

Plaintiffs' arguments incorrectly blend the law regarding claim preclusion with the law regarding issue preclusion. "New York's transaction-based claim preclusion doctrine does not require a complete identity of issues." *BNF NY Realty, LLC v. Nissan Motor Acceptance Corp.*, No. 18 CIV. 3664 (LGS), 2019 U.S. Dist. LEXIS 9631, 2019 WL 140648, at *6 (S.D.N.Y. Jan. 9, 2019); *see also O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357, 429 N.E.2d 1158, 445 N.Y.S.2d 687 (1981) ("[O]nce a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy."). Accordingly, it is no barrier to application of the doctrine of claim preclusion that the state trial court purportedly did not consider particular valuation theories in reaching its determination of what constituted just compensation for the taking of the Property.

At oral argument, Plaintiffs' counsel cited two additional cases in support of the argument that res judicata does not apply here: *Frein v. Pennsylvania State Police*, 47 F.4th 247 (3d Cir. 2022); and *Donnelly v. Maryland*, 602 F. Supp. 3d 836 (D. Md. 2022). Neither of

these out-of-Circuit cases supports the result urged by Plaintiffs. In *Frein* (which did not involve eminent domain, but instead the confiscation of guns in connection with a criminal prosecution), the Third Circuit applied the res judicata law of Pennsylvania, and concluded that: (1) issue preclusion did not apply because the state court had not decided an "identical" issue; and (2) claim preclusion did not apply because the underlying state court proceeding was not a "vehicle for seeking just compensation for a taking," but allowed only the return of the property. 47 F.4th at 251 (citations omitted). New York's claim preclusion doctrine simply does not require that the issues be identical, as explained above, and the state court proceedings in this matter expressly dealt with the issue of just compensation. *Frein* thus is not on point.

As to *Donnelly*, the court in that case applied the res judicata law of Maryland, under which "three elements must be satisfied: (1) there was a final judgment on the merits in the earlier suit; (2) the claim presented in the current action is identical to the one determined in the prior adjudication; and (3) the parties in the present litigation are the same or in privity with the parties in the earlier dispute." 602 F. Supp. 3d at 851 (citing *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 161 (4th Cir. 2008) ("Generally, the preclusive effect of a judgment rendered in state court is determined by the law of the state in which the judgment was rendered. Under Maryland law, the elements of res judicata are: (1) that the parties in the present litigation are the same or in privity with the parties in the earlier dispute; (2) that the claim presented in the current action is identical to the one determined

in the prior adjudication; and (3) that there has been a final judgment on the merits.")). Again, this is not the law in New York. New York does not require that the claim presented in a subsequent action be identical to that decided in the prior adjudication—instead, "New York courts adhere to a broad transactional analysis barring a later claim arising out of the same factual grouping as an earlier litigated claim even if the later claim is based on different legal theories or seeks dissimilar or additional relief." *Niles v. Wilshire Inv. Grp., LLC*, 859 F. Supp. 2d 308, 338 (E.D.N.Y. 2012) (quotation omitted).

Further, Plaintiffs' argument regarding the purported lack of a full and fair opportunity to litigate makes it clear that the state trial court indeed did have occasion to consider the issue of "true income capitalization" in determining what constituted just compensation for the taking of the Property, but decided the matter in a way that Plaintiffs view as erroneous. More specifically, Plaintiffs contend that their claim could not be "fully heard in state court due to the interpretation of a state regulation"—namely, the state trial court's determination that 22 N.Y.C.R.R. § 202.61(e) barred the introduction of certain expert evidence regarding "true income capitalization," which ruling was affirmed by the New York State Supreme Court, Appellate Division, Fourth Department (the "Appellate Division"). (Dkt. 99-2 at 6-8, 10). As Plaintiffs themselves explain it, they "respectfully disagree with the Appellate Division's interpretation of section 202.61, which precluded [their expert witness] from testifying affirmatively in support of his analytical, expert Income Capitalization." (Dkt. 99-2 at 9).

Plaintiffs' arguments misapprehend what it means to have a full and fair opportunity to litigate an issue in state court. The state trial court and the Appellate Division fully heard Plaintiffs' arguments regarding their proffered expert testimony. Indeed, the Appellate Division agreed with Plaintiffs that "[w]here . . . the highest and best use [of a property at the time of a taking] is the one the property presently serves and that use is income-producing, then the capitalization of income is a proper method of valuation." *Rochester Genesee Reg'l Transportation Auth. v. Stensrud*, 173 A.D.3d 1699, 1701, 101 N.Y.S.3d 549 (4th Dep't 2019). However, the Appellate Division determined that Plaintiffs' proffered expert testimony was not consistent with the valuation set forth in their appraisal report, and explained that 22 N.Y.C.R.R. § 202.61 limits the "affirmative proof of value" at trial "to matters set forth in [the parties'] respective appraisal reports." *Id.* (citations omitted). Accordingly, it affirmed in relevant part the state trial court's preclusion order. The New York Court of Appeals denied leave to appeal the Appellate Division's decision "upon the ground that the order sought to be appealed from does not finally determine the proceeding[.]" *Rochester Genesee Reg'l Transportation Auth. v. Stensrud*, 35 N.Y.3d 950, 124 N.Y.S.3d 617, 147 N.E.3d 1155 (2020).

The state trial court's adverse evidentiary ruling, as affirmed by the Appellate Division—even if erroneous—does not establish that Plaintiffs were deprived of a full and fair opportunity to litigate the matter of just compensation. "The doctrine of res judicata does not depend on whether the prior judgment was free from

error. Otherwise, judgments would have no finality and the core rationale of the rule of res judicata repose would cease to exist." *Mitchell v. Nat'l Broad. Co.*, 553 F.2d 265, 272 (2d Cir. 1977) (citations omitted); *see also Tarka v. Armstrong*, No. 01 CIV. 5605 (LAK), 2002 U.S. Dist. LEXIS 23751, 2002 WL 31741259, at *3 (S.D.N.Y. Dec. 6, 2002) ("An assertion of legal error underlying a prior judgment . . . is insufficient to justify a conclusion that plaintiff lacked a full and fair opportunity to litigate."). In other words, what Plaintiffs seek—a second bite at the apple based on their disagreement with the state trial court's determinations—is precisely what the doctrine of res judicata is designed to avoid. The remedy for an erroneous legal ruling is the appellate process. *See Mitchell*, 553 F.3d at 272-73 ("Indeed, if appellant's claims of error were to decide this case, there would no longer be a distinction between direct review of an erroneous judgment and collateral attack. Here, the former was available and used by the appellant. As to the latter, however, unlike the federal habeas corpus statutes, the federal civil rights acts do not provide for collateral review of state court judgments. Federal courts do not sit to review the determinations of state courts."). In other words, now that there has been a final determination of the state court proceeding, Plaintiffs may seek review of the state trial court's evidentiary rulings from the Appellate Division and the New York Court of Appeals—and even potentially petition the United States Supreme Court for a writ of certiorari.

Plaintiffs' reliance on *Burgos v. Hopkins*, 14 F.3d 787 (2d Cir. 1994) (*see* Dkt. 99-2 at 9-10), is misplaced. In

Burgos, the defendants sought to invoke the doctrine of res judicata based on a prior state court habeas corpus proceeding. 14 F.3d at 790. The Second Circuit found the doctrine inapplicable because "it is clear that a petitioner in a New York State habeas proceeding is not entitled to damages," and accordingly the state court hearing the habeas petition did not have the power to grant the petitioner the relief sought in his subsequent § 1983 action. *Id.* at 791-92. By contrast, the state trial court in this case was fully empowered to grant Plaintiffs just compensation, in the form of monetary damages, for the taking of the Property. This included a claim for consequential damages beyond the mere value of the property, which is also what is sought in this action in Plaintiffs' second cause of action. (*Compare* Dkt. 98-6 at 5-6 (seeking consequential damages related to "Cloud of Condemnation," as well as interest and financing costs) *with* Dkt. 58 at ¶ 57 (same)). And while Plaintiffs' counsel suggested at oral argument that there were additional damages being sought in this action based on the alleged continuing violation of Plaintiffs' constitutional rights, Plaintiffs do not contest that they could have sought such damages before the state trial court.[2]

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2. The only specific category of consequential damages identified in the amended complaint and not in Plaintiffs' state court claim is "Legal, Expert and Other Professional Costs." (Dkt. 58 at ¶ 57). New York law expressly provides that "where deemed necessary by the court for the condemnee to achieve just and adequate compensation, the court, upon application, notice and an opportunity for hearing, may in its discretion, award to the condemnee an additional amount, separately computed and stated, for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees actually

Finally, the Court is unpersuaded by Plaintiffs' argument that the Supreme Court's decision in *Knick v. Township of Scott, Pennsylvania*, U.S. , 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019), requires a different result. In *Knick*, the Supreme Court overruled its prior holding in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985), that "a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights—and thus cannot bring a federal takings claim in federal court—until a state court has denied his claim for just compensation under state law." *Knick*, 139 S. Ct. at 2167. Accordingly, "the property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation, and therefore may bring his claim in federal court under § 1983 at that time." *Id.* at 2168.

Knick did not disturb the well-established rules regarding the preclusive effect of state court judgments in § 1983 actions. In *Morabito v. New York*, 803 F. App'x 463 (2d Cir. 2020), the Second Circuit rejected the appellant's argument that, due to *Knick*, "the federal court should not apply collateral estoppel to state court rulings on their claims." *Id.* at 468. The Second Circuit explained that

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incurred by such condemnee." N.Y. Em. Dom. Proc. Law § 701. Here, the state court expressly found that "sufficient facts exist to order a hearing pursuant to EDPL § 701 should [Plaintiffs] apply for such additional condemnation." (Dkt. 98-23 at 23). There is accordingly no question that Plaintiffs could pursue this additional category of damages in the state court proceedings.

"[t]he district court was required by federal law to apply collateral estoppel to issues decided in [the state court] proceedings." *Id.*

Other federal circuit courts agree. *See, e.g., Tejas Motel, L.L.C. v. City of Mesquite by & through Bd. of Adjustment*, F.4th , No. 22-10321, 63 F.4th 323, 2023 U.S. App. LEXIS 6907, 2023 WL 2596717, at *9 (5th Cir. Mar. 22, 2023) ("One can sympathize with Tejas's procedural plight. It was forced into state court by *Williamson County*, and now cannot avoid the consequences of the adverse judgment it received. But nothing in *Knick* nullifies long-settled principles of res judicata. State courts are competent to adjudicate federal claims, and their judgments are entitled to full faith and credit in federal court."); *Ocean Palm Golf Club P'Ship v. City of Flagler Beach*, 861 F. App'x 368, 371 (11th Cir. 2021) ("[I]n *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005), the Court held that the decision of a state court on a claim for just compensation under state law generally has preclusive effect in a later federal action. And in *Knick*, the Court explained that *San Remo* revealed the flaws in the *Williamson County* exhaustion requirement. 139 S. Ct. at 2167 . . . . The *Knick* Court did not overrule or otherwise modify its precedent in *San Remo*."). Plaintiffs have not cited, nor has the Court discovered in its own research, any case in which a court has determined that *Knick* overruled *San Remo* or otherwise disturbed the longstanding principles of res judicata discussed above.

"Federal courts . . . are not free to disregard 28 U.S.C. § 1738 simply to guarantee that all takings plaintiffs can

have their day in federal court." *San Remo*, 545 U.S. at 338. Here, Plaintiffs were heard in state court, and the Court is obliged to give the same preclusive effect to the state trial court's judgment that it would be given in the courts of New York. Under New York law, all of Plaintiffs' claims in this action are barred by claim preclusion. Accordingly, Defendant is entitled to summary judgment in its favor.

CONCLUSION

For the reasons set forth above, the Court grants Defendant's motion for summary judgment. (Dkt. 98). The Clerk of Court is directed to enter judgment and close the case.

SO ORDERED.

/s/ Elizabeth A. Wolford
ELIZABETH A. WOLFORD
Chief Judge
United States District Court

Dated April 14, 2023
Rochester, New York

APPENDIX C — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF MONROE, FILED JUNE 8, 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

Index No. I2015006975

ROCHESTER GENESEE REGIONAL TRANSPORTATION AUTHORITY,

Petitioner,

v.

JOHN R. STENSRUD and MARIA B. STENSRUD,

Respondents.

Filed June 8, 2023

DECISION AND ORDER

In this condemnation proceeding Petitioner Rochester Regional Transportation Authority (hereinafter "RGTRA") condemned through eminent domain real property owned by Respondents John R. Stensrud and Maria B. Stensrud (hereinafter "Respondents") formerly located at 36-38 Chamberlain Street, Rochester, New York. Thereafter, Respondents filed a claim for damages pursuant to EDPL § 503. Pursuant to EDPL § 5o8 and 22 NYCRR 202.61 the parties exchanged appraisal reports.[1]

1. Each party moved, *in limine*, to strike portions of the other party's appraisal, or to strike the appraisal *in toto*. In a Memorandum and Order dated June 7, 2019, the Appellate

Appendix C

On June 6, 2022 a trial was conducted. On September 26, 2022, the Court issued a Decision and Order determining that just compensation for the subject property would be $509,000. In its Decision, the Court noted that as the final award was substantially higher than the initial offer made by RGTRA an EDPL § 701 application may be warranted. A judgment reflecting same was filed on December 13, 2022.

Respondents now move pursuant to EDPL § 701[2] for an order for an additional amount of compensation to reimburse Respondents for attorneys' fees, appraiser fees, and other fees incurred by Respondents to prosecute the underlying action.

Division, Fourth Department held that the trial court erred in granting RGTRA's motion *in limine* to strike the portion of Respondents' appraisal which used an "investment value" method of determining fair compensation. (*Matter of Rochester Genesee Regional Transp. Auth. v Stensrud*, 173 AD3d 1699 [4th Dept. 2019] modifying the order of Hon. Thomas J. Stander, JSC entered December 15, 2016.)

2. "In instances where the order or award is substantially in excess of the amount of the condemnor's proof and where deemed necessary by the court for the condemnee to achieve just and adequate compensation, the court, upon application, notice and an opportunity for hearing, may in its discretion, award to the condemnee an additional amount, separately computed and stated, for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees actually incurred by such condemnee. The application shall include affidavits of the condemnee and all parties that have incurred expenses on the condemnee's behalf, setting forth inter alia the amount of the expenses incurred." (EDPL § 701.)

For the reasons that follow, the Respondents' motion for additional allowance pursuant to EDPL § 701 is GRANTED, in part.

Findings of Fact

Condemnation Proceedings and Award

In 2013 RGTRA began the initial phases of the Campus Improvement Project (hereinafter "project") to expand its existing campus located at 1372 East Main Street.[3] This project contemplated RGTRA taking through eminent domain several properties west of the RGTRA campus. In anticipation of potentially condemning these properties, RGTRA conducted appraisals of the properties throughout 2014 and 2015, including Respondents' property at 36-38 Chamberlain Street.[4]

In May of 2014 RGTRA received the appraisal report for Respondents' property which valued the property at $255,000.[5] After receiving the appraisal report, RGTRA decided it was not economically feasible to take Respondents' property, so on May 30, 2014, RGTRA

3. Stipulated Facts at ¶ 3.

4. Stipulated Facts at ¶¶ 6-8.

5. Exhibit B: Bruckner, Tillet, Rossi, Cahill & Associates Appraisal Report of 36-38 Chamberlain Street, appraisal date August 13, 2015.

informed Respondents that it would not acquire the property.[6]

However, in 2015 RGTRA reconsidered its prior decision not to acquire the Respondent's property. On May 14, 2015, RGTRA offered Respondents $255,000 as compensation for the property; Respondents rejected the offer.[7] This action was commenced on June 23, 2015, and on August 13, 2015, RGTRA acquired Petitioners' property by filing the requisite acquisition map with the Monroe County Clerk's Office.[8]

On or about November 16, 2015 (based upon an updated appraisal) RGTRA paid Respondents $292,000 as advance payment for taking the property.[9] (See EDPL § 304[A][3]: "a condemnee may reject the offer as payment in full and instead elect to accept such offer as an advance payment, and that such election shall in no way prejudice the right of a condemnee to claim additional compensation . . . ")

On October 9, 2019, Respondents initiated an action in the United States District Court for the Western District

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6. Stipulated Facts at ¶¶ 9-12; TM 150:13 to 153:9; Letter from Mark Ballerstein, dated June 2, 2014, to Respondent John Stensrud, attached as Exhibit D to Affidavit of John R. Stensrud (NYSCEF Docket # 106).

7. Stipulated Facts at ¶¶ 13-15.

8. Stipulated Facts at ¶¶ 4; 16-19.

9. Stipulated Facts at ¶¶ 20-21.; EDPL §§ 303; 304(A)(3).

of New York.[10] Respondents now argue that the initiation of this action lead to RGTRA obtaining an updated appraisal relying upon Federal "Yellow Book" appraisal standards. On April 14, 2022, RGTRA paid Respondents an additional $174,870.58, and Respondents argue that this payment would not have been made but for the updated appraisal obtained by RGTRA due to the federal action.

On September 26, 2022, the Court issued a Decision and Order determining that just compensation for the subject property would be $509,000.

Respondents' Request for Additional Award

Respondents now move for reimbursement of their legal fees for both the instant action as well as the federal action, in the amount of $283,439.44, and disbursements and expenses for both actions in the amount of $112,196.03 for a total request of $395,635.47. Respondents argue that the attorneys' fees and expenses incurred in both the state and federal actions should be reimbursed to "achieve just and adequate compensation".

RGTRA opposes the request. RGTRA argues that: (1) as to the attorneys' fees and costs and disbursements related to the federal action, these expenses were not

10. *Stensrud v Rochester Regional Transportation Authority*, Civil Action No. 6:19-cv-06753 [W.D.N.Y.]. On April 14, 2023, the Hon. Elizabeth Wolford dismissed the case finding that res judicata principles precluded the Respondents from litigating their takings claim in federal court, having litigated same before this Court.

necessary to achieve just compensation; and (2) as to the state expenses, those expenses are unreasonable as not reflecting the common practice for attorneys' fees in condemnation matters or were due to unnecessary litigation brought by Respondents in the state action.[11]

Conclusions of Law

An Additional Allowance Under EDPL § 701 is Warranted

"EDPL 701, as amended, authorizes an additional allowance for certain expenses when the court's compensation award is "substantially in excess" of the amount originally offered by the condemnor *(see also, Lee-Hi Fuel Corp. v State of New York*, 179 AD2d 494; *Matter of New York City Tr. Auth. [Superior Reed & Rattan Furniture Co.]*, 160 AD2d 705, 710-711)." (*Scuderi v. State*, 184 AD2d 1073 [4th Dept. 1992].) Here, the Court's award is substantially higher than the initial $255,000 offer or the $292,000 offered by RGTRA as the advance payment. " . . . [I]n applying the test set forth in EDPL 701, we look to the condemnor's initial offer, not its trial proof *(see Matter of New York City Tr. Auth. [Superior Reed & Rattan Furniture Co.]*, 16o A.D.2d 705, 709-71o, 553 N.Y.S.2d 785; *see also General Crushed Stone* CO. v

11. RGRTA also argues that some of the expenses were not supported by affidavit of the persons providing the service reflected in the expense and thus the expense should be disallowed. The Court rejects this argument, as the Respondents attached the affirmation of their attorney who "incurred expenses on the condemnee's behalf" as required by EDPL § 701.

State of New York, 93 N.Y.2d 23, 27, 686 N.Y.S.2d 754, 709 N.E.2d 463)." *(Matter of Vill. of Haverstraw*, 18o AD3d 791, 794 [2nd Dept. 2020].)

"The statute requires two determinations: first, whether the award is "substantially in excess of the amount of the condemnor's proof' and second, whether the court deems the award necessary "for the condemnee to achieve just and adequate compensation." Where both tests are satisfied, the court *may* award reasonable fees." (*Hakes v. State*, 81 NY2d 392, 397 [1993], italics in original.)

The first prong has been satisfied, as the eventual award was substantially in excess of RGTRA's first offer. As the eventual award is 74% higher than what RGTRA offered as advance payment, it is substantially in excess sufficient to invoke the protections afforded by EDPL § 701. (*See e.g.*, *Matter of Town of Islip v. Sikora*, 220 A.D.2d 434 [2nd Dept. 1995] [37% higher sufficient]; *Matter of E.D.J. Quality Realty Corp. v. Village of Massapequa Park*, 204 AD2d 321 [2nd Dept. 1994] [58% higher sufficient].)

As to the second prong, the Court must determine what expenses were <u>necessary</u> to achieve just and adequate compensation.[12]

12. Notably, EDPL § 701 was amended in 1987 to remove language that had previously limited the potential additional allowance to "up to ten percent of the difference between the amount of the order, award or judgment and the condemnor's proof, not to exceed in any event, ten thousand dollars". " . . .

Certainly, there must be limiting principles that would guide a court in exercising its discretion to award an additional allowance pursuant to EDPL § 701. The statute itself notes that only "*reasonable* attorney, appraiser and engineer fees actually incurred by such condemnee" are subject to reimbursement. (EDPL § 701, emphasis supplied.) RGTRA argues that "reasonable" attorneys' fees should be determined under long-standing principles (citing to *Matter of Freeman*, 34 NY2d 1 [1974][13]) and with regard to the "public fisc" (citing to *Matter of New York*

[T]he purpose of the amendment was to ease the "strict limits on recoverable costs" so that a condemnee would not be forced "to accept a condemnor's offer even if he or she believes that it does not constitute just compensation" (see, Governor's Approval Mem., Bill Jacket, L.1987, ch. 771, § 1, reprinted in 1987 McKinney's Session Laws of N.Y., at 2724). The Law Revision Commission viewed the changes as "necessary to guarantee fair treatment of condemnees as unwilling litigants who find their property subject to a condemnor's power of eminent domain" (Law Rev. Comm'n Mem. in Support, Bill Jacket, L.1987, ch. 771, § 1, reprinted in 1987 McKinney's Session Laws of N.Y., at 1993)." (*Gen. Crushed Stone Co. v. State*, 93 NY2d 23, 27 [1999].)

13. "Long tradition and just about a universal one in American practice is for the fixation of lawyers' fees to be determined on the following factors: time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved (citations omitted)." (*Matter of Freeman*, 34 NY2d 1, 9 [1974].)

State Urban Dev. Corp., 183 Misc. 2d 900 [Sup. Ct. NY Cty. 2000]).[14]

The Court agrees that the traditional principles in evaluating "reasonable" attorneys' fees are appropriate in determining the extent of the additional allowance under EDPL § 701 attributable to Respondents' attorney expenses. However, RGTRA suggests another limiting principle: attorney time and expenses for unsuccessful litigation strategies (e.g., appeals from adverse rulings in which Respondents did not prevail, or the federal action that was dismissed) should not be reimbursed. The Court finds that this suggested limiting principle goes too far.

Limiting reimbursement to only time and expenses incurred to pursue litigation strategies that were ultimately successful would have a chilling effect on the right of condemnees to pursue adequate compensation.[15]

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14. Respondents note that through November of 2021 (prior to the trial of the underlying condemnation action) RGTRA had expended over $300,000 in attorney time and expenses. (*See* Summary of RGTRA Legal Fees Through 11/30/21, attached as Exhibit A to Correspondence from Respondents to Court dated Mach 21, 2023 [NYSCEF Docket # 132].)

15. The Court acknowledges that the right to "reimbursement of litigation expenses does not fall within the constitutional right of just compensation for a taking" (*Gen. Crushed Stone* Co. v. *State*, 93 NY2d 23, 27 [1999]), however EDPL § 701 expresses "the Legislature's clear statutory directive that "just and adequate compensation" cannot be achieved where the ultimate award is significantly impaired by costs necessary to demonstrate that the condemnor's offer was substantially lower than it should have been (citations omitted)." (*Id.*)

Not every motion submitted or argument made will be successful in a given case. Condemnees should be allowed the same leeway provided the condemnor- to engage in non-frivolous litigation strategies designed to obtain adequate compensation unburdened by the fear that time and expenses will not be recoverable should the strategy not be successful. Otherwise, condenmnees may not undertake reasonable efforts to vindicate their constitutional right to just compensation as they cannot predict with certainty the likelihood of success of any given strategy, motion made, or expense incurred in support of same.[16]

The Court does not believe that was the intent of the Legislature when it implemented § 701. Instead, an appropriate limitation would be restricting any additional allowance to reimbursement for attorney time pursuing litigation or strategies (or expenses incurred in support of same) that were non-frivolous. "[EDPL § 701] assures that a condemnee receives a fair recovery by providing an opportunity for condemnees whose property has been substantially undervalued to recover the costs of litigation establishing the inadequacy of the condemnor's offer. The statute, however, also vests the trial court with discretion, in order to limit both the incentive for *frivolous* litigation and the cost of acquiring land through eminent domain (see, Governor's Mem. Approving Bill, 1987 McKinney's

16. Every attorney knows that predicting success in litigation is a fool's errand. "If you can look into the seeds of time / And say which grain will grow and which will not, / Speak then to me". (*Macbeth*, Act I, Scene 3.)

Session Laws of N.Y., at 2724)." *(Hakes* v. *State*, 81 NY2d at 397, emphasis supplied.)

Moreover, although the underlying litigation may be non-frivolous, not all attorneys' fees or expenses undertaken by the condemnee are subject to reimbursement. In assessing whether the time or expense incurred should be awarded as an additional allowance, the Court should determine "whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures" *(Grant v. Martinez*, 973 Fed 96, 99 [2nd Cir. 1992]), or whether the claimed expense is one normally considered part of law office overhead or would otherwise be subsumed in the attorney's billable time. (*See e.g.*, *U.S. for Use & Benefit of Evergreen Pipeline Const.* Co. v. *Merritt Meridian Const. Corp.*, 95 F3d 153, 173 [2'1 Cir. 19961: "We agree that computer research is merely a substitute for an attorney's time that is compensable under an application for attorneys' fees and is not a separately taxable cost. *See*, *Haroco*, 38 F.3d at 1441.")

With these principles in mind, the Court will review the Respondents' submissions to determine whether the attorney time expended, or expenses incurred, were reasonably related to advance a non-frivolous strategy, or to or to develop relevant, admissible evidence in the underlying condemnation proceeding.[17] As set forth in greater detail below, the Court finds that an additional allowance reimbursing the Respondents for a substantial

17. The Court does not imply that reimbursement is limited to only attorney time or expenses related to evidence actually admitted into evidence in the trial of this matter.

percentage of their attorneys' fees and expenses in the state action—but not the federal action—is required to achieve just and adequate compensation.

State Proceeding Attorney Time and Expenses

Respondents' expenses related to attorney time, expert witnesses, appraisals, and the eventual trial in the instant proceeding fall within the ambit of potentially reimbursable expenses subject to an additional allowance under EDPL § 701.

As far as the expenses related to attorneys' fees, Respondents submit: (1) copies of their legal bills from Lacy Katzen LLP and from Refermat Hurwitz & Daniel PLLC[18]; (2) an affidavit from Caroline Saylor, Director of Finance at Lacy Katzen LLP; and (3) a spreadsheet of payments made by Respondents to Lacy Katzen LLP.[19] In June of 2019 Respondents agreed with their counsel to pay counsel 1/3 of the recovery above the advance payment in lieu of billings, with the exception of time spent on motion practice and appeals (this amount is $26,389.05).

The Court has reviewed the legal bills for the attorney time incurred by Respondent to prosecute the state

18. Respondents' counsel was previously a member of Lacy Katzen LLP and later became a member of Refermat Hurwitz & Daniel PLCC.

19. Respondents were billed a total of $183,590.86 from Lacy Katzen LLP for attorney time and expenses.

condemnation proceeding.[20] The attorney time, including the time spent on the appeals in this matter, were for matters a reasonable attorney would undertake to protect their client's interests and advance a condemnation claim.[21] Thus, reimbursement for these expenses, including the cost of preparing the § 701 motion, shall be awarded. However, as explained below, any charges related to the federal action will not be reimbursed.

The Court shall deduct $14,339.50 from Lacy Latzen LLP invoice 243565; $7,748.00 from the Refermat Hurwtiz & Daniel invoice 3530; and $24,580.50 from the Refermat Hurwtiz & Daniel invoice 3586[22]. The remaining amounts in those invoices (if any) will be awarded. The attorney time claimed for the federal motion practice will not be

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20. The Court rejects RGTRA's argument that as the traditional retainer agreement in a condemnation case is limited to one third of the eventual recovery (defined as the amount of the award less the initial offer), Respondents should be limited to one third of the difference between their initial offer and the eventual award. The Court agrees with Respondents that this was not the "typical" condemnation case and involved complex issues and extensive litigation.

21. The various appeals between the parties, some of which were not successful, were not frivolous, and the Court determines that a reasonable attorney would pursue those appeals.

22. The total billings on this invoice were $59,580.50. Respondents are claiming $25,000 in reimbursable time. The Court reviewed this invoice, and believes that 84.75 hours in attorney time, and 31.45 hours in paralegal time is properly attributable to the state action. Thus, the Court awards the full $25,000 requested.

awarded.[23] The Court will reduce the amount awarded as reflected in the January 2, 2023 invoice to $414.50 (the remaining amounts were related to federal court work). The Court will grant an additional allowance for the attorney time reflected in the February 15, 2023 invoice (number 4178) in the amount of $25,000. The Court will also grant as an additional allowance the $26,389.05 paid on a contingent basis by Respondents to their counsel.

The expenses incurred to prepare for litigation such as expert witness fees and appraisals are reimbursable as necessary expenses. The Court has reviewed the invoices for the John R. Rynne (trial testimony and appraisal), as well as the invoices for Ralph Eisenmann. All invoices and amounts are reasonable, and the Court awards those expenses ($24,677.00) as part of the additional allowance. The Court also awards the state court filing fees ($181.35), and expenses related to the appeals ($14,735.51). The expenses related to the trial are also awarded ($1,090.59). The Court declines to award the expenses reflected in Exhibit I "Research/ Miscellaneous (State Court)".

The total award for attorneys' fees in the state court action as an additional allowance is $224,220.69. The Court determines that this amount is necessary for the Respondents to achieve just compensation. The attorneys' fees awarded are done so in light of the complexity of the case, the extensive litigation, and the experience of counsel.

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23. These costs for attorney time are reflected in undated invoices denominated "RGTRA (Motions and Appeals) for time incurred between May 7, 2022 and July 13, 2022.

Appendix C

The total award for reimbursement of expenses as an additional allowance is $40,684.

Federal Proceeding Attorney Time and Expenses

As to the expenses and attorneys' fees incurred by Respondents in the federal action, Respondents have not established how those expenses were necessary to achieve adequate compensation. None of the expenses incurred in the federal action generated evidence that was used in the state court proceeding that lead to the eventual award.

Instead, Respondents argue that but for the prosecution of the federal action RGRTA would not have paid an additional $174,870.58 (on April 14, 2022) to Respondents. However, this additional payment had no bearing on the eventual award—it merely reduced the amount of total interest payable by RGTRA to the Respondents.

The federal action was initiated by Respondents to advance an argument previously made in state court but precluded by the trial court. This ruling was upheld on appeal (*Rochester Genesee Reg'l Transportation Auth. v. Stensrud*, 173 AD3d 1699 [4th Dept. 2019]). Respondents, bringing the federal action, sought a "second bit of the apple" in an attempt to achieve greater compensation in federal court. As the federal action did not result in any evidence admissible in the state action, or reasonably inform the strategy taken by Respondents in the state court action, none of the attorney time or expenses in the federal action are recoverable as an additional allowance.

Appendix C

Order

Now upon the submissions of the parties,[24] oral argument of the application, and due deliberation having been had, it is

ORDERED that Respondents' motion for an additional allowance pursuant to EDPL § 701 is granted, in part; and it is further

ORDERED that the Respondents are awarded an additional allowance of $264,904.69; and it is further

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24. Notice of Motion dated February 10, 2023 (NYSCEF Docket # 101); Affidavit of John R. Stensrud, dated February 8, 2023, with exhibits (NYSCEF Docket #s 102-108); Affirmation of John T. Refermat, Esq., dated February 10, 2023, with exhibits (NYSCEF Docket #s 109-124); Memorandum of Law in Support (NYSCEF Docket # 125); Letter Correspondence to the Court with exhibit (NYSCEF Docket #s 131-132); Affirmation of Patrick Seely, Esq., dated May 11, 2023 (NYSCEF Docket # 133); Affirmation of Kathleen M. Bennet, Esq., dated May 16, 2023, with exhibits (NYSCEF Docket #s 134-137); Memorandum of Law in Opposition (NYSCEF Docket # 138); Affidavit of John R. Stensrud in Reply, dated May 22, 2023 (NYSCEF Docket # 139); Affirmation of John T. Refermat, Esq. in Reply, dated May 22, 2023, with exhibits (NYSCEF Docket #s 140-143); Affidavit of John Rynne, dated May 19, 2023, with exhibits (NYCEF Docket #5 144-150); Affirmation of James S. Grossman, Esq. in Reply, dated May 19, 2023 (NYSCEF Docket # 150; Affidavit of Caroline Saylor in Reply, dated May 19, 2023, with exhibit (NYSCEF Docket #s 152-153); Memorandum of Law in Reply (NYSCEF Docket # 154).

Appendix C

ORDERED that Respondents shall prepare a Judgment reflecting the above and submit same to the Court, on notice to Petitioner, by July 24, 2024.

This constitutes the Decision and Order of the Court.

Dated: June 8, 2023

/s/
Honorable Daniel J. Doyle, JSC

APPENDIX D — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF MONROE, FILED SEPTEMBER 26, 2022

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF MONROE

Decision and Order
Index No. 12015006975

ROCHESTER GENESEE REGIONAL
TRANSPORTATION AUTHORITY,

Petitioner,

v.

JOHN R. STENSRUD AND MARIA B. STENSRUD,

Respondents.

Daniel J. Doyle, J.,

In this condemnation proceeding Petitioner Rochester Regional Transportation Authority (hereinafter "RGTRA") condemned through eminent domain real property owned by Respondents John R. Stensrud and Maria B. Stensrud (hereinafter "Respondents") formerly located at 36-38 Chamberlain Street, Rochester, New York. Thereafter, Respondents filed a claim for damages

pursuant to EDPL § 503. Pursuant to EDPL § 508 and 22 NYCRR 202.61 the parties exchanged appraisal reports.[1]

On June 6, 2022 a trial was conducted. Respondents offered the testimony of their appraiser, John P. Rynne. Petitioner submitted the testimony of its Chief Executive Officer, William Carpenter, and its General Counsel, Daniel DeLaus. The parties also submitted a joint stipulation of facts not in dispute. The Court received into evidence five (5) exhibits: Exhibit A: Rynne, Murphy and Associates, Inc. Appraisal Report of 36-38 Chamberlain Street, effective date August 13, 2015; Exhibit B: Bruckner, Tillet, Rossi, Cahill & Associates Appraisal Report of 36-38 Chamberlain Street, appraisal date August 13, 2015; Exhibit C: Uniform Appraisal Standards for Federal Land Acquisitions, 2016; Exhibit D: Respondent's Claim pursuant to EDPL § 503; and Exhibit E: Letter from John R. Stensrud to Petitioner's Environmental Assessment Staff dated June 12, 2013.

1. Each party moved, *in limine*, to strike portions of the other party's appraisal, or to strike the appraisal *in toto.* In a Memorandum and Order dated June 7, 2019 the Appellate Division, Fourth Department held that the trial court erred in granting RGTRA's motion *in limine* to strike the portion of Respondents' appraisal which used an "investment value" method of determining fair compensation. (*Matter of Rochester Genesee Regional Transp. Auth. v Stensrud*, 173 AD3d 1699 [4th Dept. 2019] modifying the order of Hon. Thomas J. Stander, JSC entered December 15, 2016.)

Appendix D

The Court also admitted into evidence portions of the deposition testimony of Respondent John R. Stensrud.[2]

The Court also provided the parties an opportunity to submit requests for findings of fact pursuant to CPLR § 4213.

Findings of Fact

Condemnation Proceedings

The Respondents are long-term investors in real estate.[3] They would purchase properties, renovate them, and hold onto them "for a long period of time recognizing [their] up-front renovation cost would justify that".[4] In early June of 2011 Respondents purchased 36-38 Chamberlain Street (hereinafter "the property") in the

2. Deposition of Respondent Jon Stensrud, December 8, 2021 (hereinafter "Stensrud") at 95:23-25 to 97:15; 93:11 to 94:6; 98:1-9; 98:25 to 102:24; 104:18 to 108:16; 111:17 to 113:6; 223:21 to 230:8; and 233:15 to 235:9. The Court sustained RGTRA's objection to admitting 134:12 to 137:15.

3. Exhibit A at page 144. As this exhibit was admitted without objection, the Court will consider this information. "An expert may rely on hearsay in rendering an opinion provided that it is "of a kind accepted in the profession as reliable in forming a professional opinion" (*People v Sugden*, 35 NY2d 453, 460 [1974]; *see Greene v Xerox Corp.*, 244 AD2d 877, 877-878 [1997], *lv denied* 91 NY2d 809 [1998])." (*Woodhouse v. Bombadier Motor Corp. of Am.*, 5 AD3d 1029, 1030, [4th Dept. 2004].)

4. TM 20:19-24.

"Beechwood Neighborhood" of the City of Rochester.[5] Subsequent to the purchase, Respondents significantly renovated the property, adding a third-floor addition and creating a four-unit apartment building, each unit having either three, or four bedroom apartments.[6] Their investment strategy was to renovate the property with higher-end appliances and materials in order to attract stable tenants willing to pay higher than average market rent, and pay all or most of the utility costs, for the area in which the property was located.[7]

During the renovations of the property, in June or July of 2011, Respondent John Stensrud became aware that RGTRA[8] may condemn the property when his general contractor was approached by the president of the Beechwood Neighborhood Association and was informed that "they're going to tear down this building".[9]

As Mr. Stensrud was aware that some eminent domain projects "don't come to fruition" and since he had invested a significant amount of funds into renovating the property, and had entered into various contracts, he decided to

5. Joint Stipulation of Facts Not in Dispute (hereinafter "Stipulated Facts") at i; Exhibit A at page 30.

6. Exhibit A at page 38; Stensrud at 224:20.

7. Exhibit A at page 144.

8. RGTRA is a New York public authority vested with the power of eminent domain by Section 1299-ii if the New York State Public Authorities Law. (Stipulated Facts at ¶ 1.)

9. Stensrud at 96:3-15.

move forward with the renovations.[10] His decision was also based upon conversations with William Carpenter, CEO of RGTRA, in the summer of 2012 wherein he was informed that RGTRA had not yet committed to condemning his property.[11]

Mr. Stensrud completed most of the renovations by April of 2012, having expended approximately $573,000, and he received a partial certificate of occupancy and began accepting tenants.[12] The property was fully rented in late 2012 and generating net operating income (market stabilized) of approximately $34,000 per year, or a net income (non-market stabilized) of $44,310 per year.[13]

In 2013 RGTRA began the initial phases of the Campus Improvement Project (hereinafter "project") to expand its existing campus located at 1372 East Main Street.[14] This project contemplated RGTRA taking through eminent domain several properties west of the RGTRA campus. In anticipation of potentially condemning these properties, RGTRA conducted appraisals of the properties throughout

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10. Stensrud at 100:7 to 101:12; 223:21 to 224:23.

11. Stensrud at 99:14 to 102:12; Trial Minutes (hereinafter "TM") at 144:4-23.

12. Stensrud at 223:21 to 225:25; Exhibit A at page 16; TM at 38:6-24.

13. Stensrud at 228:11; Exhibit E at page 4; Exhibit A at 115, 126; Exhibit A at 145-146.

14. Stipulated Facts at ¶ 3.

2014 and 2015, including Respondents' property at 36-38 Chamberlain Street.[15]

In May of 2014 RGTRA received the appraisal report for Respondents' property which valued the property at $255,000.[16] After receiving the appraisal report, RGTRA decided it was not economically feasible to take Respondents' property, so on May 30, 2014 RGTRA informed Respondents that it would not acquire the property.[17]

However, in 2015 RGTRA reconsidered its prior decision not to acquire the Respondent's property.[18] On May 14, 2015 RGTRA offered Respondents $255,000 as compensation for the property; Respondents rejected the offer.[19] On August 13, 2015 RGTRA acquired Petitioners' property by filing the requisite acquisition map with the Monroe County Clerk's Office.[20]

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15. Stipulated Facts at ¶¶ 6-8.

16. Exhibit B: Bruckner, Tillet, Rossi, Cahill & Associates Appraisal Report of 36-38 Chamberlain Street, appraisal date August 13, 2015.

17. Stipulated Facts at ¶¶ 9-12; TM 150:13 to 153:9.

18. According to CEO Carpenter, RGTRA decided to take the Respondents' property for two reasons. Bore samples of the soil north of the subject property indicated potential contamination that might seep onto Respondents' property, and the cost to build a fence around the Respondents" property was estimated to be $80,000. (TM 147:3-15; 166:8-22.)

19. Stipulated Facts at ¶¶ 13-15.

20. Stipulated Facts at ¶¶ 4; 16-19.

Appendix D

On or about November 16, 2015(based upon an updated appraisal) RGTRA paid Respondents $292,000 as advance payment for taking the property.[21]

On December 30, 2015 Respondents filed a Claim pursuant to EDPL §§ 503, 504 outlining their claim for direct damages in the amount of $1,386,257 and consequential damages in the amount of $155,540.[22]

On April 5, 2016 Respondents received the Rynne, Murphy and Associates, Inc. Appraisal Report of 36-38 Chamberlain Street, effective date August 13, 2015.[23]

Thereafter, during a settlement conference with the court, RGTRA offered to pay $420,000 in the hopes to avoid litigation.[24]

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21. Stipulated Facts at ¶¶ 20-21.; EDPL §§ 303; 304(A)(3).

22. Respondents' Exhibit B. The consequential damages claimed consisted of: (1) $13,998 in interest cost in acquiring replacement properties due to the delayed taking; (2) $4,272 in delayed interest from acquisition of the property to the advance payment; (3) $44,620 in lost or reduced rents due to "condemnation blight"; (4) costs related to obtaining a mortgage to finance property in the amount of $58,450; and (5) $34,200 in costs to obtain a zoning variance which Respondents attribute to RGTRA's opposition to their variance application.

23. Stipulated Facts at ¶ 23.

24. TM at 167-172.

Six years later, on April 14, 2022, RGTRA paid Respondents an additional $174,870.58. Total compensation paid to the Respondents for the property was $466,870.58.[25]

Testimony of John P. Rynne

John P. Rynne is an appraiser who is a Member of the Appraisal Institute, which certifies his expertise in commercial and residential appraisals. He received his certification in 1989 or 1990 from New York State and the federal government to conduct appraisals.[26]

Mr. Rynne prepared an appraisal for Respondents' property, and it was admitted as Exhibit A.[27] In preparing his appraisal report, Mr. Rynne evaluated the Respondents' property using four (4) different approaches: sales comparison approach, income capitalization approach, cost approach, and an investment valuation.[28] The first three approaches determined traditional "market value" as opposed to investment value unique to an individual investor or class of investors.[29]

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25. Stipulated Facts at ¶¶ 27-28.

26. The parties stipulated that Mr. Rynne was an expert witness. (TM at 14:20-24.)

27. TM at pages 7-10.

28. TR at 12:2-16; Exhibit A, pages 57 et seq. (sales comparison); pages 84 et seq. (income capitalization); pages 127 et seq. (cost approach); pages 144 et seq. (investment valuation).

29. TM 99:7-19.

Mr. Rynne defined "market value" as: "[t]he most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus" and that it was not impacted by the subjective intentions of the property owner.[30]

Mr. Rynne characterized the property as "one of the more unique four-family properties [he] ever looked at" due to the number of bedrooms and the size of the apartments contained therein.[31] As the property had units with three or four bedrooms, it could command greater rent. Mr. Rynne conceded that multi-family units similar to the Respondents' property are regularly sold on the open market, but he believed the Respondents' property to be unique.[32] Mr. Rynne determined that the highest and best use of the property on the date of the appraisal was a four-family commercial apartment building, with the market for the property being local investors and/or owner-occupants.[33]

In determining the market value of the property of $430,000, Mr. Rynne used sales approach, income approach, and a cost approach. Using the sales comparison approach, which compared the property to similar

30. TM 98:7-18.

31. TM at 15:10-17; 17:21 to 18:18.

32. TM 96:10 to 97:18.

33. TM 35:4-24.

properties in the area that had similar characteristics, Mr. Rynne valued the property at $430,000.[34] However, there were significant differences between the comparable properties examined compared to the subject property, such as differences in square footage and the comparable sales were not contemporaneous with the taking of the subject property.[35]

The income capitalization approach Mr. Rynne employed is based on the premise that an informed, prudent, and rational purchaser will pay no more for a property than the cost of acquiring a comparable property with a forecast income stream that has a similar size, length, quality, stability, *and risk* as the potential income stream for the subject property.[36]

In evaluating the Respondent's property using the income capitalization approach Mr. Rynne began using market rents for similarly situated properties[37] and deducting various expenses to determine net operating income. The expenses that Mr. Rynne deducted would be "stabilized", meaning the "property has undertaken and has market rents, market expenses . . . ".[38] Relevant to his analysis of Respondents' property was the fact that the

34. TM pages 56 to 62.

35. TM 55:23 to 61:16.

36. TM 1-5: 2-9; Exhibit A at page 84.

37. Mr. Rynne described these as "modernization, quality, location". TM 65:13-17.

38. TM 73:6-8.

property had a low assessment, leading to lower actual real estate taxes than a "market" property. Additionally, in comparing the property to comparable properties, Mr. Rynne applied other "market" expenses, such as a management fee, although the Respondents did not incur this fee as they managed their own property.[39] Also, in conducting his analysis, Mr. Rynne did not use the actual rents received, but applied "market" rent to the property.[40] Mr. Rynne adjusted the market rent to account for the fact that the property was located in a distressed area.[41] Since the property was located in a low-income area, this would increase the risk to a prospective buyer, which impacted the capitalization rate Mr. Ryne used to evaluate the property.[42]

As a result, the net operating income he determined based upon market factors was $34,077 for the Respondents' property, significantly lower than the actual net income generated by the property.[43] Using the stabilized net income, and a capitalization rate he determined was reasonable (8.n%), Mr. Rynne valued the property under the income capitalization method at $420,000.[44]

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39. TM 36:22 to 37:22.

40. TM 68:20 to 70:1.

41. TM 109:9-15.

42. TM 112:5-25.

43. TM 72:20 to 73:14; 74:4 to 75:17; Exhibit A at 109-115; 178-180.

44. TM 77:6-9; 100:23-19.

Under the cost approach method, Mr. Rynne determined replacement cost, less depreciation. As the property was recently completely renovated, Mr. Rynne determined that a cost approach was also appropriate.[45] Estimating the cost of the land and using the "Marshall Valuation Service Manual" to determine the cost of building a replica, replacement property and subtracting depreciation, Mr. Rynne determined that the value of the property was $540,000.[46] This approach also employed subjective depreciation/obsolescence factors that impacted Mr. Rynne's determination of value.[47]

Based upon all three analyses, and various weighting of all three approaches, Mr. Rynne concluded that the market value of the Respondents' property was $430,000.[48]

Mr. Rynne also evaluated the property using an investment value approach.[49] According to Mr. Rynne,

45. TM 12:12-15; 78:7-15.

46. TM 78:18 to 81:20; 83:23 to 84:3. Exhibit A at 142.

47. Exhibit A at page 140. TM 80:12 to 83:5.

48. TM 116:22 to 117:8. Exhibit A, pages 147 to 148.

49. The Appellate Division, Fourth Department determined that this analysis contained in Mr. Rynne's appraisal report was admissible. "In our view, the stricken portion of respondents' appraisal report, although titled "investment valuation," applied an income capitalization approach using the standard income capitalization formula, i.e., value equals net income divided by a capitalization rate (*see Matter of Hempstead Country Club v. Board of Assessors*, 112 A.D.3d 123, 136, 974 N.Y.S.2d 98 [2d Dept. 2013]), and applied factors that, according to respondents'

investment value is specific to an individual investor or class of investors that differ from the general market. Most investors are looking for higher annual returns and are shorter-term investors than Respondents.[50] The primary differences between the investment value approach and the income capitalization approach were differences in the expenses and capitalization rate.[51] As far as the expenses analyzed under the investment value approach, Mr. Rynne examined historical expenses, as opposed to "market" expenses.[52] Additionally, since Respondents were longer-term investors, Mr. Rynne applied a lower capitalization rate, accounting for a lower rate of return sought by Respondents.[53]

Salient to the issues herein, the two expenses that differed between the income capitalization approach and the investment value approach were the real estate taxes and management fee.[54] Mr. Rynne testified that normally a renovated property, such as the Respondent's property, would see their assessment rise, leading to an increase

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appraiser, **accurately reflect the property's value** and would make the property more appealing to prospective purchasers." (*Rochester Genesee Reg'l Transportation Auth. v. Stensrud*, 173 A.D.3d 1699, 1701 [4th Dept. 2019], emphasis added.)

50. TM 84:22 to 85:18.

51. TM 86:1-14.

52. TM 86:15 to 87:17.

53. TM 87:18 to 88:17.

54. Compare Exhibit A, page 115 to Exhibit A page 145.

in property taxes. However, the Respondents' property's assessment did not increase after the renovations.[55] Mr. Rynne, in conducting his income capitalization approach determined that this was unlikely to continue, and thus used a "market" tax rate.[56] Mr. Rynne, in analyzing the property using the investment value approach, assumed real estate taxes would remain flat.[57] Based upon his analysis of investment value, Mr. Rynne determined the property was worth $695,000 on August 13, 2015.[58]

Conclusions of Law

"The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken." (*United States v. Miller*, 317 US 369, 373, [1943].)

Courts have traditionally relied upon "market value" to determined just compensation. However, [a]lthough the market-value standard is a useful and generally sufficient tool for ascertaining the compensation required to make the owner whole, the Court has acknowledged that such an award does not necessarily compensate for all values

55. TM 43:17 to 44:11/

56. TM 44:17-23; 73:11-19; 101:24 to 102:22.

57. Exhibit A at page 145.

58. TM 92:15-19.

an owner may derive from his property." (*United States v. 564.54 Acres of Land, More or Less, Situated in Monroe & Pike Ctys., Pa.*, 441 US 506, 511, [1979].)

The limits of just compensation to be awarded condemnees is not bounded solely by fair market value. Recognizing that "market value" analysis alone may not always be a fair method to determine adequate compensation to a condemnee, the Supreme Court has noted:

> But while the indemnity principle must yield to some extent before the need for a practical general rule, this Court has refused to designate market value as the sole measure of just compensation. For there are situations where this standard is inappropriate. As we held in *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123, 70 S.Ct. 547, 549, 94 L.Ed. 707 (1950):
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> > "[When market value has been too difficult to find, or when its application would result in manifest injustice to owner or public, courts have fashioned and applied other standards . . . Whatever the circumstances under which such constitutional questions arise, the dominant consideration always remains the same: What compensation is 'just' both to an owner whose property is

> taken and to the public that must pay the bill?"

(*Id.* at 512)[59]

New York Courts have similarly employed a "market value" analysis in determining just compensation. As the Fourth Department held in a prior appeal between the parties herein:

> There is "no fixed method for determining [fair market] value" (*Matter of Allied Corp. v. Town of Camillus*, 80 N.Y.2d 351, 356, 590 N.Y.S.2d 417, 604 N.E.2d 1348 [1992], *rearg. denied* 81

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59. "The guiding principle of just compensation is reimbursement to the owner for the property interest taken. 'He is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole but is not entitled to more.' *Olson v. United States*, 292 U.S. 246, 255, 54 S.Ct. 704, 708, 78 L.Ed. 1236. In many cases this principle can readily be served by the ascertainment of fair market value—'what a willing buyer would pay in cash to a willing seller.' *United States v. Miller*, 317 U.S. 369, 374, 63 S.Ct. 276, 280, 87 L.Ed. 336. *See United States v. Commodities Trading Corp.*, 339 U.S. 121, 123, 70 S.Ct. 547, 549, 94 L.Ed. 707; *United States v. Cors*, 337 U.S. 325, 333, 69 S.Ct. 1086, 1090, 93 L.Ed. 1392. **But this is not an absolute standard nor an exclusive method of valuation.** *See United States v. Commodities Trading Corp., supra*, 339 U.S. at page 123, 70 S.Ct. at page 549; *United States v. Cors, supra*, 337 U.S. at page 332, 69 S.Ct. at page 1090; *United States v. Miller, supra*, 317 U.S. at pages 374–375, 63 S.Ct. at page 280; *United States v.* Toronto, *Hamilton & Buffalo Nav. Co.*, 338 U.S. 396, 70 S.Ct. 217, 94 L.Ed. 195." (*United States v. Virginia Elec. & Power Co.*, 365 US 624, 633 [1961], emphasis added.)

> N.Y.2d 784, 594 N.Y.S.2d 720, 610 N.E.2d 393 [1993]; *see generally Matter of Consolidated Edison Co. of N.Y., Inc. v. City of New York*, 8 N.Y.3d 591, 597, 838 N.Y.S.2d 458, 869 N.E.2d 634 [2007]) and, absent evidence of a recent sale of the subject property, "the courts have traditionally valued property by one of three methods: comparable sales, capitalization of income or reproduction cost less depreciation" (*Allied Corp.*, 80 N.Y.2d at 356, 590 N.Y.S.2d 417, 604 N.E.2d 1348; *see Matter of Oakwood Beach Bluebelt, Stage 1 [City of New York—Yeshivas Ch'San Sofer, Inc.]*, 164 A.D.3d 1453, 1456, 84 N.Y.S.3d 518 [2d Dept. 2018]). Where, as here, "the highest and best use is the one the property presently serves and that use is income-producing, then the capitalization of income is a proper method of valuation" (*Matter of City of New York [Oceanview Terrace]*, 42 N.Y.2d 948, 949, 398 N.Y.S.2d 134, 367 N.E.2d 641 [1977]; *see Matter of Town of Riverhead v. Saffals Assoc.*, 145 A.D.2d 423, 423, 535 N.Y.S.2d 389 [2d Dept. 1988]; *see generally Matter of Techniplex III v. Town & Vil. of E. Rochester*, 125 A.D.3d 1412, 1413-1415, 3 N.Y.S.3d 521 [4th Dept. 2015]).

(*Rochester Genesee Reg'l Transportation Auth. v. Stensrud*, 173 A.D.3d 1699, 1700-01, [4th Dept. 2019].)

But New York courts also recognize that market value is not the sole determinative of just compensation where

it would result in manifest injustice to the condemnee. (*See Port Auth. Trans-Hudson Corp. v. Hudson Rapid Tubes Corp.*, 20 NY2d 457 [1967]: Fair market value is normally accepted as a just standard for compensation, but when market value is too difficult to find or when its application would result in manifest injustice to owner or public, other standards may be applied.)

With these principles in mind, the Court evaluated the various approaches used by Mr. Rynne to determine the just compensation due to Respondents.

The Court discounts the sales approach analysis conducted by Mr. Rynne due to the unique circumstances herein. The comparable properties reviewed by Mr. Rynne were not sufficiently like the subject property. None were four-unit apartment buildings, and most were sales that occurred over a year prior to the taking herein and did not reflect the rise in market prices that began after the sales of the comparable properties and continued through the time of the taking of the subject property. Furthermore, as the subject property was unique, the sales approach adjustments employed by Mr. Rynne to adjust several variables were relatively large, impacting reliability of that approach.

Similarly, the replacement cost approach is not sufficiently reliable to be solely used by the Court to determine adequate compensation for the property. That approach considered "substantial intangible" obsolescence factors and the ultimate discount computed by Mr. Rynne

for those factors, although informed by his expertise, was largely subjective.

The Court agrees that income capitalization would be the correct method to value this property (*Rochester Genesee Reg'l Transportation Auth. v. Stensrud, supra*), but due to the unique circumstances presented in this case, neither income capitalization method employed by Mr. Rynne (the traditional income capitalization versus the investment valuation capitalization) is appropriate to definitively determine just compensation in this case.

RGTRA attempted to establish that as the Respondents became aware of the potential condemnation of the subject property after beginning renovations, and proceeded with the renovations, they alone should bear any financial loss incurred (the difference in the investment costs undertaken by Respondents and the compensation awarded due to the condemnation of the property using Mr. Rynne's final valuation of $430,000). The Court rejects this argument. Had the Respondents purchased the property and began renovations with the definitive knowledge the property would be condemned, this argument would have merit. However, any potential notice of condemnation to the Respondents occurred *after* they had purchased the property and began renovations in 2011. Furthermore, the information provided to Respondents by RGTRA at that time was that the property *may* be condemned at some undetermined, future date.[60] Indeed, RGTRA informed

60. For instance, CEO Carpenter informed the Respondents at a meeting in 2012 "I let him know the state we're at in the project, that if we're allowed to go forward . . . ". (TM 144:14-15.) At

Respondents in 2014 that it would not be condemning the property at all. It wasn't until 2015, when RGRTA again changed its prior determination that it would not condemn the property, that Respondents were told definitively that their property would be condemned.

Respondents established that they were long-term investors in the subject property, and the "market" for the property would be long-term investors. Given the unique circumstances of this case, a more nuanced analysis than the application of strict market valuation under the traditional methods must be employed. Recognizing that the Respondents purchased and renovated the subject property to obtain a long-term return on their investment is an important consideration in determining "just compensation" to the Respondents. Indeed, it is inconceivable that Respondents would invest $576,000 in the property and then voluntarily sell it within three years of its renovation for only $420,000 (the amount Mr. Rynne determined was market value to short term investors). Thus, this level of compensation would result in a manifest injustice to Respondents. (*Port Auth. Trans-Hudson Corp. v. Hudson Rapid Tubes Corp., supra.*)

Given the unique business model employed by Respondents, the Court concludes that the appropriate "market" for this property would be long-term investors,

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a later meeting in June of 2012, CEO Carpenter offered to explore the alternative of moving the Stensruds property. Thereafter, as CEO Carpenter testified, RGTRA "let Mr. Stensrud know we were not moving forward with the purchase of the property". (TM 146:19-20.)

and thus the capitalization rate to be used in this case would be lower than the 8.11% used by Mr. Rynne.[61] That rate was based upon his determination that short-term investors would value the property at a lower price in order to obtain a higher return on their investment. However, long-term investors would value the property at a higher price as they would hold the property over a greater period of time.

Nor is the investment valuation income capitalization method employed by Mr. Rynne appropriate as it relies upon variables that are either unfeasible (real estate taxes) or unique to Respondents and not an appropriate market expense (management fee). The Court believes the capitalization rate for long-term investors employed by Mr. Rynne is appropriate (6.36%) but that some of the expenses used by Mr. Rynne are not. ("Where capitalization of income is the proper valuation procedure and one expert utilizes that method, a court is not required to adopt that testimony per se but may use all the evidence in the record in order to establish fair market value." *Matter* of *City of New York*, 42 NY2d 948, 949 [1977].)

The real estate taxes expense used by Mr. Rynne in evaluating the property using the investment value income capitalization method was not realistic. Although the property was levied only $4,150 in real estate taxes, a long-term investor purchasing the property would assume

61. TM 85:14-18.

that those taxes would increase substantially.[62] Thus, the Court will assume $12,500 in market real estate taxes.[63]

Additionally, a long-term investor would evaluate the property using market expenses, including the management fee that would be incurred. Thus, the management fee utilized by Mr. Rynne in the income capitalization analysis will be used.[64] All other market expenses determined by Mr. Rynne are reasonable.

Based upon the long-term capitalization rate (6.36%) as applied to the anticipated yearly net operating income of $32,377[65], the Court determines that the fair market value of the property at the time of the taking was $509,000.

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62. The low property tax amount was due to the low property assessment, as the assessed value of the property had not changed post-renovation. TM 73:3-19.

63. The Court also finds that the amount of market real estate taxes used by Mr. Rynne was too low. The assessment range for comparable assessments was determined by Mr. Rynne to be $25.76 to $43.15 per sq. foot for similar properties. However, Mr. Rynne used a lower figure of $31.51 per sq. foot for the subject property. As the property was recently renovated, and was obtaining greater than market rents, and as the prices for properties were increasing after the comparables were sold, a greater assessed value for the subject property is warranted. The Court determines that a realistic assessment would have been $235,000 and a yearly tax burden of $12,500.

64. Exhibit A at page 115.

65. Exhibit A at page 145, less increased real estate taxes and increased management fee.

Thus, the Court awards $509,000 as just compensation for the taking of the subject property.[66]

The Court awards interest on the award of $509,000 from the date of acquisition, less the advance payment of $292,000.[67] The interest will be the statutory rate of 9%, which the Court determines is presumptively reasonable. The Court also awards $4,272 in delayed interest from acquisition of the property to the date of the advance payment. (EDPL § 514; Unconsolidated Laws §2501; *Adventures Whitestone Corporation v. City of New York*, 65 NY 2d 83 [1985]; *Metropolitan Transportation Authority v. American Pen Corp.*, 94 NY2d 154 [1990].)[68]

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66. This amount is substantially similar to the replacement cost approach determination when one accounts for the fact that the property was to be considered a long-term investment. Using that approach Mr. Rynne valued the property at $537,000. However, he used an 8% entrepreneurial profit margin. Using the 3.5% return Respondents anticipated receiving on their investment the replacement cost would be $503,000.

67. EDPL § 514(A) states: "[s]ubject to the provisions of this chapter, a condemnee shall be entitled to lawful interest from the date of acquisition to the date of payment . . . Where the condemnor has made an advance payment . . . the condemnor's obligation to pay interest on the amount so paid or deposited shall terminate as of the date of such payment or deposit. (EDPL § 514.) As RGTRA, on April 14, 2022, paid Respondents an additional $174,870.58, interest on the remaining amounts due will be reduced by that amount from that date until the date of judgment.

68. The Court credits the testimony of Mr. DeLaus that during a settlement conference RGTRA offered $420,000 to settle this action. However, give the determination herein that just compensation shall be $509,000 for the property, an amount substantially greater than the amount offered, the Court finds this testimony to be irrelevant.

As to all other claims made by Respondents in their EDPL § 503 Claim the Court finds that they are not supported by the evidence at trial. Although Mr. Rynne made an oblique reference to a claim of condemnation blight in the form of reduced rents, there was no evidence submitted in support of those claims.[69] All other claims were similarly unsupported.

Finally, the Court determines that sufficient facts exist to order a hearing pursuant to EDPL § 701 should the Respondents apply for such additional compensation.[70]

"EDPL 701, as amended, authorizes an additional allowance for certain expenses when the court's compensation award is "substantially in excess" of the

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69. Respondents did not testify at trial. Although Mr. Rynne testified that Mr. Stensrud informed him that he needed to charge lower rents due to the "cloud of condemnation" in the neighborhood (see Exhibit A at page 107 and TM 69:9-22), the hearsay information imparted by Mr. Stensrud was not relied upon by Mr. Rynne in analyzing the property and rendering his opinion. Thus, it will not be considered by the Court has adequate proof of condemnation blight damages. (*Woodhouse v. Bombadier Motor Corp. of Am., supra.*)

70. EDPL § 701 states, in part: Inn instances where the order or award is substantially in excess of the amount of the condemnor's proof and where deemed necessary by the court for the condemnee to achieve just and adequate compensation, the court, upon application, notice and an opportunity for hearing, may in its discretion, award to the condemnee an additional amount, separately computed and stated, for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees actually incurred by such condemnee." (EDPL § 701.)

amount originally offered by the condemnor (*see also*, *Lee-Hi Fuel Corp. v State of New York*, 179 AD2d 494; *Matter of New York City Tr. Auth. [Superior Reed & Rattan Furniture Co.]*, 160 AD2d 705, 710-711)." (*Scuderi v. State*, 184 AD2d 1073 [4th Dept. 1992].) Here, the Court's award is substantially higher than the initial $255,000 offer or the $292,000 offered by RGTRA as the advance payment. " . . . [I]n applying the test set forth in EDPL 701, we look to the condemnor's initial offer, not its trial proof (*see Matter of New York City Tr. Auth. [Superior Reed & Rattan Furniture Co.]*, 160 A.D.2d 705, 709-710, 553 N.Y.S.2d 785; *see also General Crushed Stone Co. v State of New* York, 93 N.Y.2d 23, 27, 686 N.Y.S.2d 754, 709 N.E.2d 463)." (*Matter of Vill. of Haverstraw*, 180 AD3d 791, 794 [2nd Dept. 2020].) "The statute requires two determinations: first, whether the award is "substantially in excess of the amount of the condemnor's proof ' and second, whether the court deems the award necessary "for the condemnee to achieve just and adequate compensation." Where both tests are satisfied, the court *may* award reasonable fees." (*Hakes v. State*, 81 NY2d 392, 397 [1993], italics in original.)

As the eventual award is 74% higher than what RGTRA offered as advance payment, it is substantially in excess sufficient to invoke the protections afforded by EDPL § 701. (*See e.g.*, *Matter of Town of Islip v. Sikora*, 220 A.D.2d 434 [2nd Dept. 1995] [37% higher sufficient]; *Matter of E.D.J. Quality Realty Corp. v. Village of Massapequa Park*, 204 AD2d 321 [2nd Dept. 1994] [58% higher sufficient].)

Appendix D

A determination on whether additional monies should be awarded to Respondents to achieve just and adequate compensation herein must be made after an application for a hearing, on notice to RGTRA, and conducting same.

Order

Now upon the trial of the action herein, and upon consideration of the parties' requests for findings of fact, and due deliberation having been had, it is

ORDERED that the Respondents are awarded as just compensation for the taking of the subject property the amount of $509,000; and it is further

ORDERED that Respondents are awarded prejudgment interest in the amount of 9% on the amount of $509,000, less the amount of the advance payment, from the date of the taking to the date of judgment; and it is further

ORDERED that Respondents are awarded $4,272 in delayed interest from acquisition of the property to the date of the advance payment; and it is further

ORDERED that the award and interest shall be reduced by the payment made by Petitioner's on April 14, 2022, in the amount of $174,870.58; and it is further

ORDERED that all other claims for payment made by Respondents are denied; and it is further

ORDERED that Respondents shall prepare a Judgment reflecting the above and submit same to the Court, on notice to Petitioner, by October 17, 2022.

This constitutes the Decision and Order of the Court.

Dated: September 26, 2022

/s/ Daniel J. Doyle
Honorable Daniel J. Doyle, JSC