No.

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IN THE SUPREME COURT OF THE UNITED STATES

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DOINA ROSU ALMAZON,

PETITIONER

V.

TOWN OF OYSTER BAY,

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

Michael Confusione
Hegge & Confusione, LLC
P.O. Box 366, Mullica Hill, NJ 08062
(800) 790-1550; mc@heggelaw.com
Counsel for Petitioner

Question Presented

Did the Town of Oyster Bay's action in demolishing the plaintiff's nearly completed, rebuilt home violate the due process guarantee under the United States Constitution's Fifth and Fourteenth Amendments?

Parties to the Proceedings

Petitioner Doina Rosu Almazon was the plaintiff in the United States District Court and the appellant in the United States Court of Appeals. Respondent Town of Oyster Bay was the defendant in the United States District Court and the appellee in the United States Court of Appeals.

Statement of Related Proceedings

As noted in the District Court's decision (Appx B), related cases include,

- On April 16, 2021, Oyster Bay filed a lawsuit against Ms. Almazon in Nassau County Supreme Court ("First State Action");
- On May 24, 2022, Ms. Almazon filed an action in federal court, *Doina Rosu v. The Town of Oyster Bay, et al.*, No. 22-cv-3073 (E.D.N.Y) ("First Federal Action"), asserting claims under 42 U.S.C. § 1983 for "violating [her] due process rights [and] civil

rights" and "illegally taking" the Property under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution;

- On September 26, 2023, Ms. Almazon filed a second state court action in Nassau County Supreme Court about the demolition of her home, *Almazon v. The Town of Oyster Bay, et al.*, Index No. 615587/2023 (the "Second State Action");
- Ms. Almazon has litigated in state and federal court against her mortgagor as well (though not related directly to this present action), *e.g.*, Almazon v. JPMorgan Chase Bank, Nat'l Ass'n, No. 19-CV-4871 (VEC), 2020 WL 1151313, at *2–6 (S.D.N.Y. Mar. 9, 2020).

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Petition for a Writ of Certiorari

Petitioner Doina Rosu Almazon respectfully petitions for a writ of certiorari to review the decisions of the United States Court of Appeals for the Second Circuit and the Eastern District Court of New York to address the due process violations that the lower courts ignored.

Opinions Below

The Summary Order of the United States Court of Appeals is unpublished and appears at Appendix A. The Memorandum & Order of the United States District Court is unpublished and appears at Appendix B.

Jurisdiction

The Summary Order of the Court of Appeals was entered on April 28, 2025. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1254.

Constitutional and Statutory Provisions Involved

"No person shall … be deprived of life, liberty, or property, without due process of law," U.S. Const. amend. V.

42 U.S. Code § 1983, "Civil action for deprivation of rights," provides (in part), "Every person who, under color of any statute,

ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

Statement of the Case

This case arises from the Town of Oyster Bay's demolition of Doina Rosu Almazon's home, which was being rebuilt after the Hurricane Sandy disaster, even though Doina's rebuilt home was well underway, structurally sound, and 70% complete, as confirmed by reports submitted by the architect, engineer, and builder. Despite that, the Town insisted on demolishing the nearly completed home. Ms. Amazon filed the lawsuit in the Eastern District Court below to seek redress for the Town's

wrongful actions and destruction of her family home, alleging that the Town of Oyster Bay violated her rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and New York law. Appx. B.

In October 2012, Hurricane Sandy severely damaged the Property, forcing Ms. Almazon and her family to live elsewhere. Over the intervening years, the Property has remained vacant while Ms. Almazon attempted to rebuild it. Appx. B.

In 2014, the Town claimed it began receiving complaints from residents concerning the Property's condition (a claim that the plaintiff denies and submitted contrary documentation showing she had maintained the Property). On April 16, 2021, Oyster Bay filed a lawsuit against Ms. Almazon in the Nassau County Supreme Court (the "First State Action," alleging that the Property was in a dangerous condition in violation of Chapter 96 of the Town Code ("Dangerous Buildings and Abandoned Buildings"). Following litigation without any hearing or conferences, on January 7, 2022, the state court issued a self-executing order directing Ms. Almazon to provide by May 2, 2022, a report by a

licensed engineer "certifying that the Property has achieved compliance with all applicable codes, including [the Oyster Bay] Town Code," and if Ms. Almazon "failed to timely comply" the Town would "have the right to demolish" the Property on ten days written notice (the "Demolition Order") (which Petitioner charged was false as the Town had failed to comply with its own rules). Appx. B.

Following the expiration of the deadline to meet the Demolition Order's conditions and to certify compliance with all applicable building codes, on May 3, 2022, Oyster Bay notified Ms. Almazon of the impending demolition, ignoring Ms. Almazon's reports from the architect, engineer, and builder showing the home was structurally sound and its rebuilding 70 percent completed. Appx. B.

On May 13, 2022, Ms. Almazon filed an emergency order to show cause in the state court, seeking a stay of the demolition order. The state court denied the stay and permitted demolition to proceed, stating that Ms. Almazon (1) submitted "insufficient documentation/proof to support immediate and/or ultimate relief being sought" (ignoring Ms. Almazon's architect, engineer, and builder reports that she submitted

and showed the home was structurally sound and its rebuilding 70 percent completed); (2) engaged in an "improper attempt to re-submit untimely documents pertaining to underlying application"; and (3) provided "insufficient proof of compliance with the [the Demolition] Order." Appx. B.

On May 24, 2022, Ms. Almazon filed an action in the federal court, Doina Rosu v. The Town of Oyster Bay, et al., No. 22-cv-3073 (E.D.N.Y) (the "First Federal Action"), asserting claims under 42 U.S.C.A. § 1983 for "violating [her] due process rights [and] civil rights" and "illegally taking" the Property under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, alleging that the Property was "structurally-sound as certified by [an] architect, builder, and engineer," and requesting a stay of the Demolition Order plus monetary damages. Appx. B. The following day (May 25, 2022), Ms. Almazon filed a motion for an order to show cause seeking a temporary restraining to stay the demolition. The day after that, on May 26, 2022, the district court held an emergency hearing on Ms. Almazon's motion; the court (Judge Gary R. Brown) said that the parties' dispute "has

been thoroughly, thoroughly litigated" (which Petitioner said was false, submitting proofs showing this) and raised the issue of whether the court had subject matter jurisdiction based on the *Rooker-Feldman* doctrine. Judge Brown denied Ms. Almazon's motion for a temporary restraining order and dismissed her complaint, finding that the *Rooker-Feldman* doctrine divested the court's subject matter jurisdiction over Ms. Almazon's claims. The next month, on June 30, 2022, Oyster Bay demolished, illegally, Ms. Almazon's family home, which was over 70 percent complete. Appx. B.

This current action began on June 29, 2023, when the plaintiff filed her complaint in the district court below (Case No. 23-cv-5584, the "Second Federal Action"). Plaintiff charges violations of her civil rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Appx. B.

Three months later, on September 26, 2023, Ms. Almazon filed another state court action in Nassau County Supreme Court regarding the demolition of her home, Almazon v. The Town of Oyster Bay, et al., Index No. 615587/2023 (the "Second State Action"). Appx. B. In this

state court action, Ms. Almazon argues that Oyster Bay and its Town Supervisor "committed Civil Contempt . . . by causing the demolition of [Ms. Almazon's] house" and "negligently caus[ed] [Ms. Almazon] mental anguish." Ms. Almazon claimed that Oyster Bay "misled" the first state court judge (Justice Marber) by providing "false testimony" in the First State Action that the Property was dangerous — attestations upon which state Supreme Court Justice Marber relied in issuing the Demolition Order. On March 5, 2024, the state court dismissed plaintiff's Second State Action, stating that the record of the First State Action "establishes conclusively that the demolition of the [Property]" was permitted by "lawful order of the [c]ourt" because "the plain language of [the Demolition Order] authorized [Town of Oyster Bay] to demolish the [Property] if Ms. ALMAZON failed to demonstrate [by the deadline of May 2, 2022] that the Property achieved compliance with all applicable codes," and stated that Ms. Almazon never provided sufficient proof of such compliance (which Ms. Almazon did but was ignored, as she continues to assert here). Appx. B. Ms. Almazon has appealed the trial court's decision; her appeal is currently pending

before the state court's Appellate Division for determination, *see Doina Almazon, appellant, v. Town of Oyster Bay, et al., respondents*, No. 2024-05013, 615587/2, 2024 WL 4921259 (N.Y. App. Div. Nov. 29, 2024) (ruling, "and on or before December 30, 2024, the appellant shall serve and file the record or appendix and the appellant's brief via NYSCEF, if applicable, or, if NYSCEF is not mandated, serve the record or appendix and the appellant's brief and upload digital copies of the record or appendix and the appellant's brief, with proof of service thereof, through the digital portal on this Court's website."). (Petitioner contends the Bank never released the insurance money from Hurricane Sandy that was made payable to Ms. Almazon and the Bank).

Defendant's Motion to Dismiss in the District Court

The district court noted that the plaintiff's complaint filed in this action "raises the following claims under 42 U.S.C.A. § 1983 and New York state law: (1) a deprivation of due process rights under the Fifth and Fourteenth Amendments to the United States Constitution; (2) a violation of the Equal Protection Clause of the Fourteenth Amendment under a theory of selective enforcement; (3) a violation of the Fourth

Amendment right to be free from unlawful searches and seizures; (4) a violation of the Takings Clause of the Fifth Amendment to the United States Constitution; (5) a violation of the Takings and Search and Seizure Clauses of the New York State Constitution; and (6) trespass, nuisance, and abuse of process under New York State common law." Appx. B.

Defendant Town of Oyster Bay argued that the complaint should be dismissed "for the following reasons: (1) lack of subject matter jurisdiction under the Rooker-Feldman doctrine; (2) Almazon's claims are subject to collateral estoppel under New York law; (3) Almazon's constitutional claims fail to meet the pleading requirements under § 1983; (4) Almazon fails to state a claim for violation of procedural due process; (5) Almazon fails to state a claim for selective enforcement under the Fourteenth Amendment; (6) Almazon's trespass and nuisance claims fail as TOBAY acted with lawful authority; (7) Almazon insufficiently alleges an abuse of process claim; and (8) Almazon is a '[v]exatious [l]itigant.'" Appx. B.

In opposing the defendant's motion to dismiss, the plaintiff highlighted alleged corruption within the town, including past indictments of officials for bribery and fraud. The plaintiff presented a Newsday article regarding an ethics investigation involving the town's Inspector General, Brian Noone, centered on a cybersecurity contract linked to his private business. The plaintiff alleged that the Town unlawfully demolished 26 homes, including hers, thereby violating her constitutional rights and state asbestos regulations. Appx. B. The plaintiff argued that the Bank hired Safeguard and never provided the plaintiff or the builder with the funds from Hurricane Sandy to complete the rebuilding of the home.

Plaintiff's affidavit filed in the district court disputed the application of the *Rooker-Feldman* Doctrine, arguing that her claims are valid and distinct from any state court actions. The plaintiff asserted that her constitutional rights were violated under 42 U.S.C.A. § 1983, as the town acted under state law with a policy of improper and discriminatory demolitions. She accused the defendants of misleading the court to obtain a demolition order and selectively enforcing town

codes. Plaintiff emphasized the need for discovery and argued that summary judgment is inappropriate due to unresolved factual issues. Appx. B.

However, the District Court granted the defendant's motion. It ruled that the plaintiff's complaint should be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman doctrine and for failure to plead municipal liability under 42 U.S.C.A. § 19. "The second requirement has been met because Almazon complains of injuries caused by the state court judgment ordering the demolition of her home. The gravamen of her Complaint is that TOBAY was not entitled to demolish her home because it was not dangerous, as the Town had claimed, which was the very issue presented to—and decided by—Justice Marber. … the injuries of which she complains were caused by the Demolition Order."

> Plaintiff now also appears to contend that TOBAY failed to credit her evidence that her home was not dangerous and misled Justice Marber into believing that it was. (Pl.'s" "Opp. ¶¶ 20–29). In addition to being conclusory, such contentions are beside the point. Ms. Almazon had the opportunity, of which she availed herself over the course of the more than one year of litigation in state court, to present evidence regarding these challenges in her efforts to obtain a

> favorable decision. Although Plaintiff now raises new claims of the deprivation of her constitutional rights as a result of the state court judgment, that "does not change the injury about which she complains," which was caused by the state court's decision. Voltaire v. Westchester Cnty. Dep't of Soc. Servs., No. 11 Civ. 8876 (CS), 2016 WL 4540837, at *11 (S.D.N.Y. Aug. 29, 2016) (citation omitted); see also Castiglione v. Papa, et al., 423 F. App'x 10, 13 (2d Cir. 2011) ("As noted by the District Court, [plaintiff] cannot avoid application of the Rooker-Feldman doctrine simply by 'presenting in federal court a legal theory not raised in state court,' for example, by framing her claims under §§ 1983 or 1985." (quoting Hoblock, 422 F.3d at 86)). Indeed, the Second Circuit has long held that a "federal plaintiff cannot escape the Rooker-Feldman bar simply by relying on a legal theory not raised in state court." Hoblock, 422 F.2d at 87. Thus, the second requirement is met. [Appx. B]

The district court said, "The third requirement has also been satisfied here because Almazon can only prevail if this Court reviews and rejects the state court's judgment. Because Plaintiff's factual allegations are inextricably intertwined with the state court's judgment, she has invited this Court to review and reject that judgment." Appx. B (Petitioner contends that the Town of Oyster Bay was aided and abetted by the Bank's hiring of Safeguard and failure to provide the plaintiff or the builder with the funds from Hurricane Sandy to complete the rebuilding of the home, which was already 70 percent completed.)

The district court said that Ms. Almazon's complaint "is devoid of any factual allegations that the Town of Oyster Bay maintained a policy or custom that violated Almazon's or anyone else's constitutional rights.… Nothing in the Complaint's description of the challenged conduct suggests that there was any widespread policy or custom in place, or that the Town was motivated by any impermissible motives."

> … Ms. Almazon does not argue that TOBAY's building codes themselves constitute an unconstitutional custom or policy. The only factual allegations regarding an unconstitutional policy or custom are contained in Almazon's Opposition to TOBAY's Motion to Dismiss. (Pl.'s Opp. ¶¶ 5–8, 18). Therein, Almazon alleges that from 2017 to 2022 the Town had a policy of using "unlicensed asbestos contractors and uncertified workers" to demolish homes containing asbestos in violation of New York State regulations. (Id.) However, these threadbare, conclusory" "allegations are insufficient to establish a plausible Monell claim. Even if true, the policy of using unlicensed contractors and uncertified workers to demolish homes containing asbestos in violation of a New York State regulations did not cause the deprivation of Almazon's constitutional rights. Put differently, how Almazon's house was actually demolished—using unlicensed contractors and uncertified workers—did not cause her constitutional injuries. Rather, it was everything that preceded the demolition. If those actions were not due to a policy or custom, and Ms. Almazon does not claim they were, she has no Monell claim. By failing to plead facts with the required level of specificity, Ms. Almazon's allegations amount to no more than naked assertions "supported by mere conclusory statements," which

> are "not entitled to the assumption of truth" to withstand a Rule 12(b)(6) motion to dismiss. Iqbal, 556 U.S. at 678–79. As such, Almazon fails to sufficiently allege a policy or custom as required to assert a claim for municipal liability under Monell, and her complaint is dismissed. [SA15-16, which Petitioner denied below and continues to deny here, stressing the violation of her due process rights]

The Court of Appeals' Decision

The court agreed that the district court erred "in concluding that Almazon raised some claims, however, that were not barred by Rooker-Feldman." Appx. A.

> We recently explained that Rooker-Feldman did not bar a selective enforcement claim because that claim "involve[d] alleged misconduct occurring in the course of a state court proceeding and the way in which the defendants chose to enforce the judgments they obtained in state court." Banyai v. Town of Pawlet, No. 23-1234, 2024 WL 1878742, at *2 (2d Cir. Apr. 30, 2024) (internal quotation marks, citation, and alteration omitted). We explained that "Rooker-Feldman does not generally bar claims against third parties for 'alleged misconduct occurring in the course of a state court proceeding,' even if the misconduct calls the state court judgment into question." Id. (quoting Hansen v. Miller, 52 F.4th 96, 100 (2d Cir. 2022)). In this case, the alleged injuries related to Almazon's selective enforcement claim flowed from the Town's actions in seeking and enforcing the demolition order "rather than from the state court judgment[]" itself. Id. Rooker-Feldman therefore did not bar Almazon's selective enforcement claim.
>
> The same is true of Almazon's procedural due process claim. "Rooker-Feldman does not apply to claims that 'speak not to

> the propriety of the state court judgments, but to the fraudulent course of conduct that defendants pursued in obtaining such judgments.'" Brodsky v. N.Y.C. Campaign Fin. Bd., No. 22-1824, 2023 WL 3162125, at *3 (2d Cir. May 1, 2023) (quoting Sykes v. Mel S. Harris & Assocs., LLC, 780 F.3d 70, 94-95 (2d Cir. 2015)). Almazon alleged that she was denied due process because the Town misled the state court into believing that her house was dangerous. Rooker-Feldman does not bar such a claim "for damages against third parties for alleged misconduct occurring in the course of a state court proceeding, because the adjudication of such claims would 'not require the federal court to sit in review of the state court judgment.'" Hansen, 52 F.4th at 100 (quoting Vossbrinck, 773 F.3d at 427).
>
> All told, Almazon's "equal protection and due process claims concern alleged discriminatory and arbitrary conduct that 'precede[d] [or occurred during] the state court proceeding,' so that conduct cannot have been produced by the proceeding." Banyai, 2024 WL 1878742, at *2 (quoting Hunter, 75 F.4th at 71). The district court therefore erred in concluding that Rooker-Feldman barred all of Almazon's claims. Appx A

But the court ruled that Ms. Almazon's complaint "failed to state a claim against the Town" (which Ms. Almazon disputed as untrue, noting that the Town had illegally trespassed on her property and was aided and abetted by the Bank, as noted above). A municipality may be held liable under § 1983 when, "as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's

officers" (citing Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)).

> To prevail on a selective enforcement claim, Almazon needed to show that (1) "compared with others similarly situated, [she] was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations." Hu v. City of New York, 927 F.3d 81, 91 (2d Cir. 2019) (quoting Zahra v. Town of Southold, 48 F.3d 674, 683 (2d Cir. 1995)). Almazon did not identify any similarly situated individuals whom the Town treated differently or provide other plausible allegations that could establish the Town's basis for its purportedly selective treatment. Beyond conclusory allegations that the Town singled her out, Almazon alleged that (1) the Town had a policy of using unlicensed asbestos contractors and uncertified workers for demolitions, and (2) the Town demolished twenty-five other homes. Neither allegation provides a sufficient factual basis for a selective enforcement claim. To the contrary, the allegation that the Town demolished twenty-five other homes suggests that the Town did not impermissibly single her out.

The Court of Appeals said that Almazon's "procedural due process claim fares no better" (despite the Town's violation of its own codes and the due process rights of its resident, Ms. Almazon):

> "The essence of due process is the requirement that 'a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.'" Mathews v. Eldridge, 424 U.S. 319, 348 (1976) (alteration omitted) (quoting Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring)). Almazon received a full opportunity to litigate this case in state court for more than a

> year. Even after the state court issued the demolition order, Almazon had four months to bring her home into compliance with the Town Code. Her claim that this process was constitutionally insufficient because the Town misled the state court relies on speculation rather than plausible factual allegations. As a result, Almazon has not plausibly alleged that "she was deprived of an opportunity granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case." Brady v. Town of Colchester, 863 F.2d 205, 211 (2d Cir. 1988).
>
> Because we conclude that Almazon's federal claims were properly dismissed either pursuant to Rooker-Feldman or for failure to state a claim, we need not address the Town's additional argument that collateral estoppel also requires us to affirm the judgment. Appx. B

The Court of Appeals ruled, further, that the district court did not err by denying Ms. Almazon leave to amend her complaint, though she acted pro se in the district court lawsuit, stating, "Almazon has filed three actions concerning the demolition of her home, and each action has been dismissed… Almazon has vigorously litigated this case since 2021, and yet she has not corrected any pleading deficiencies despite filing (and losing) several lawsuits… Almazon has not explained how she would amend her complaint." Appx. A. The Court of Appeals ruled, "A plaintiff need not be given leave to amend if [the plaintiff] fails to specify either to

the district court or to the court of appeals how amendment would cure the pleading deficiencies in [the] complaint." Appx. A. "We agree with the district court that 'there is no doubt that granting Ms. Almazon leave to amend would be unproductive'" (which Ms. Almazon again disputed, noting that aiding and abetting is a federal crime). Appx. A.

REASONS FOR GRANTING THE PETITION

This case is fundamentally about the due process guarantee under the United States Constitution's Fifth and Fourteenth Amendments. Petitioner Almazon's due process was violated when the Town of Oyster Bay demolished her home even though it was 75% completed. The Town ignored the reports of licensed architects, builders, and engineers confirming that the home was structurally sound and was 75 % complete after it was demolished in Hurricane Sandy.

Beyond the Town's wrongs, additional injuries were done to Ms. Almazon by bank attorneys refusing to provide insurance money for finishing the home's restoration—ultimately so the bank and its attorneys could profit *by selling the property to a developer*.

The due process violations caused to Ms. Almazon revolve around two primary legal issues that she now asks the Court to review.

First, the Court should review a municipality's liability under Section 1983. "[A] municipality cannot be held liable under § 1983 on a respondeat superior theory," Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); rather, liability will attach only where the action of the municipality itself can be said to have caused the harm. Nagle v. Marron, 663 F.3d 100, 116 (2d Cir. 2011). "[A] municipality can be held liable under 42 U.S.C.A. § 1983 if the deprivation of the plaintiff's rights under federal law is caused by a governmental custom, policy, or usage of the municipality." Jones v. Town of E. Haven, 691 F.3d 72, 80 (2d Cir. 2012) (citing Monell, 436 U.S. at 690–91). Thus, a municipality may be held liable when "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Monell, 436 U.S. at 690.

To establish a Section 1983 claim against a local government, the plaintiff must allege facts showing (1) the existence of a municipal policy, custom, or practice, and (2) that the policy, custom, or practice caused the violation of the plaintiff's constitutional rights. Lucente v. Cnty. of Suffolk, 980 F.3d 284, 297 (2d Cir. 2020). "To satisfy the policy-or-custom requirement, a plaintiff may challenge an 'express rule or regulation,' or the plaintiff may allege that the challenged practice 'was so persistent or widespread as to constitute a custom or usage with the force of law' or that the facts 'imply the constructive acquiescence of senior policy-making officials.'" Green v. Dep't of Educ. of City of New York, 16 F.4th 1070, 1077 (2d Cir. 2021) (*quoting* Littlejohn v. City of New York, 795 F.3d 297, 315 (2d Cir. 2015)).

Plaintiff's *pro se* complaint sufficiently alleges a claim for municipal liability under § 1983. Her complaint alleges that the actions of the Town of Oyster Bay, including the demolition of the plaintiff's property, were conducted under a policy or custom that resulted in violations of the plaintiff's constitutional rights. As noted above, the plaintiff asserts (among other matters),

- **Biased Enforcement and Violation of Rights.** The Defendant failed to exercise discretion by punishing the Plaintiff for an alleged violation of Town Code §96-3, despite the Plaintiff proving that her house was not 'dangerous' as prescribed by Town Code §96-2. A851, A857. This biased enforcement of discretion led to the wrongful declaration of the house as a 'nuisance' under Town Code §96-3. A851-53. The Town of Oyster Bay demolished 26 homes, thereby violating the Plaintiff's 4th, 5th, and 14th Amendment rights, which likely extend to the other 25 homeowners. A854.
- **Investigation and Legal Proceedings**. Investigator Stacy Portnoy from the NYS Asbestos Control Bureau confirmed that violations were issued to the municipality for demolishing properties not in accordance with New York State regulations, using unlicensed asbestos contractors and uncertified workers. A855.

These allegations, viewed in the light most favorable to the plaintiff, as required at the motion to dismiss stage, were sufficient to survive dismissal. As the plaintiff sets forth, the Town of Oyster Bay's

actions, including the demolition of the plaintiff's property, were not isolated incidents but rather *part of a broader policy or custom that violates constitutional rights*.

The Court should also review the governing law on permitting amendment of a Complaint, rather than dismissal, for a pro se plaintiff, as Ms. Almazon was in the district court. Courts should freely grant leave to amend when justice so requires, a principle that holds even greater weight in cases involving pro se litigants. Mandala v. NTT Data, Inc., 88 F.4th 353, 361 (2d Cir. 2023). Based on the assertion that it would be unproductive, the district court's decision to deny leave to amend directly contradicts this well-established standard. The plaintiff's complaint, particularly concerning allegations of municipal liability and constitutional violations, presents issues that could be remedied through amendment because the district court's dismissal of the plaintiff's complaint was premised in part on what the court identified as pleading requirements that the pro se plaintiff did not include in her complaint. Outright dismissal, without leave to amend, unjustly bars the plaintiff from addressing and correcting these

deficiencies, which was very unjust to the plaintiff and improper. Permitting the pro se plaintiff leave to amend is important as it will enable the plaintiff to uncover, through discovery, additional evidence that could support her claims and facilitate the adjudication of her claims on their merits. This is particularly important in a case like this one, which charges corruption within a town and improper actions by town officials. To demolish a 70 percent completed home and have the Bank withhold the funds needed to complete it, so that it could sell the property to a developer instead, leaving the plaintiff homeless, constitutes a due process violation that this Court should redress.

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

/s/ *Michael Confusione*
Michael Confusione (counsel of record)
Hegge & Confusione, LLC
P.O. Box 366, Mullica Hill, NJ 08062
(800) 790-1550; mc@heggelaw.com
Counsel for Petitioner

Dated: July 21, 2025

24-2789-cv
Almazon v. Town of Oyster Bay

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of April, two thousand twenty-five.

PRESENT: José A. Cabranes,
Gerard E. Lynch,
Steven J. Menashi,
Circuit Judges.

Doina Rosu Almazon,

Plaintiff-Appellant,

v. No. 24-2789-cv

Town of Oyster Bay,

Defendant-Appellee,

Jamie Dimon, JPMorgan Chase Bank, N.A., John Doe 1 through 10, John Doe Corp. 1 through 10, Those people or those entity names being fictitious and unknown to Plaintiff,

Defendants.*

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* The Clerk of Court is directed to amend the caption as set forth above.

For Plaintiff-Appellant: Michael Confusione, Hegge & Confusione, LLC, Mullica Hill, New Jersey.

For Defendant-Appellee: Andrew K. Preston, Bee Ready Fishbein Hatter & Donovan LLP, Mineola, New York.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Reyes, J.).

Upon due consideration, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that the judgment of the district court is **AFFIRMED**.

Doina Rosu Almazon filed a *pro se* lawsuit under 42 U.S.C. § 1983 against the Town of Oyster Bay after the Town demolished her home pursuant to a state court demolition order. Almazon alleged that the Town violated her rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and under New York law. The district court granted the Town's motion to dismiss each claim. The district court held that the *Rooker-Feldman* doctrine barred Almazon's claims and that Almazon failed to plausibly allege any claim against the Town under § 1983. The district court declined to exercise supplemental jurisdiction over Almazon's state law claims and denied her leave to amend her complaint. *See Almazon v. Town of Oyster Bay*, No. 23-CV-5583, 2024 WL 4649915 (E.D.N.Y. Sept. 26, 2024). Almazon appeals the dismissal of her federal claims and the denial of leave to amend. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

I

We review a district court's application of the *Rooker-Feldman* doctrine *de novo*. *See Hunter v. McMahon*, 75 F.4th 62, 66 (2d Cir. 2023). Under the *Rooker-Feldman* doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463

(2006). An action is barred under *Rooker-Feldman* only if "(1) the federal-court plaintiff lost in state court; (2) the plaintiff complains of injuries caused by a state court judgment; (3) the plaintiff invites review and rejection of that judgment; and (4) the state judgment was rendered before the district court proceedings commenced." *Hunter*, 75 F.4th at 68 (quoting *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014)). "We employ that test while keeping in mind the Supreme Court's warning that courts must avoid extending *Rooker-Feldman* beyond the narrow circumstances in which it properly applies." *Id.* at 68-69.

The district court construed Almazon's complaint to raise the following federal claims: (1) violation of due process under the Fifth and Fourteenth Amendments; (2) violation of the Equal Protection Clause of the Fourteenth Amendment based on a selective enforcement theory; (3) violation of the Fourth Amendment right to be free from unlawful searches and seizures; and (4) violation of the Takings Clause of the Fifth Amendment. *See Almazon*, 2024 WL 4649915, at *3. To the extent that the claims directly sought review of the state court demolition order, *Rooker-Feldman* barred the claims. Almazon lost in state court, and she complained—at least in part—of injuries caused by that judgment, which was finally rendered before she commenced this proceeding.

Almazon raised some claims, however, that were not barred by *Rooker-Feldman*. We recently explained that *Rooker-Feldman* did not bar a selective enforcement claim because that claim "involve[d] alleged misconduct occurring in the course of a state court proceeding and the way in which the defendants chose to enforce the judgments they obtained in state court." *Banyai v. Town of Pawlet*, No. 23-1234, 2024 WL 1878742, at *2 (2d Cir. Apr. 30, 2024) (internal quotation marks, citation, and alteration omitted). We explained that "*Rooker-Feldman* does not generally bar claims against third parties for 'alleged misconduct occurring in the course of a state court proceeding,' even if the misconduct calls the state court judgment into question." *Id.* (quoting *Hansen v. Miller*, 52 F.4th 96, 100 (2d Cir. 2022)). In this case, the alleged injuries related to Almazon's selective enforcement claim flowed from the Town's actions in seeking and enforcing the demolition

order "rather than from the state court judgment[]" itself. *Id. Rooker-Feldman* therefore did not bar Almazon's selective enforcement claim.

The same is true of Almazon's procedural due process claim. "*Rooker-Feldman* does not apply to claims that 'speak not to the propriety of the state court judgments, but to the fraudulent course of conduct that defendants pursued in obtaining such judgments.'" *Brodsky v. N.Y.C. Campaign Fin. Bd.*, No. 22-1824, 2023 WL 3162125, at *3 (2d Cir. May 1, 2023) (quoting *Sykes v. Mel S. Harris & Assocs., LLC*, 780 F.3d 70, 94-95 (2d Cir. 2015)). Almazon alleged that she was denied due process because the Town misled the state court into believing that her house was dangerous. *Rooker-Feldman* does not bar such a claim "for damages against third parties for alleged misconduct occurring in the course of a state court proceeding, because the adjudication of such claims would 'not require the federal court to sit in review of the state court judgment.'" *Hansen*, 52 F.4th at 100 (quoting *Vossbrinck*, 773 F.3d at 427).

All told, Almazon's "equal protection and due process claims concern alleged discriminatory and arbitrary conduct that 'precede[d] [or occurred during] the state court proceeding,' so that conduct cannot have been produced by the proceeding." *Banyai*, 2024 WL 1878742, at *2 (quoting *Hunter*, 75 F.4th at 71). The district court therefore erred in concluding that *Rooker-Feldman* barred all of Almazon's claims.

II

To the extent that *Rooker-Feldman* did not bar Almazon's claims, however, the district court correctly decided that Almazon failed to state a claim against the Town. "We review a district court's grant of a motion to dismiss *de novo*, accepting as true all factual claims in the complaint and drawing all reasonable inferences in the plaintiff's favor." *Schiebel v. Schoharie Ctr. Sch. Dist.*, 120 F.4th 1082, 1092 (2d Cir. 2024) (quoting *Henry v. County of Nassau*, 6 F.4th 324, 328 (2d Cir. 2021)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "We construe complaints filed by *pro se* litigants liberally and interpret them to raise the strongest arguments that they suggest." *Hunter*, 75 F.4th at 67 (internal quotation marks and alteration omitted). "Nonetheless, a *pro se* complaint must state a plausible claim for relief." *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013).

A municipality may be held liable under § 1983 when, "as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). To prevail on a selective enforcement claim, Almazon needed to show that (1) "compared with others similarly situated, [she] was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations." *Hu v. City of New York*, 927 F.3d 81, 91 (2d Cir. 2019) (quoting *Zahra v. Town of Southold*, 48 F.3d 674, 683 (2d Cir. 1995)). Almazon did not identify any similarly situated individuals whom the Town treated differently or provide other plausible allegations that could establish the Town's basis for its purportedly selective treatment. Beyond conclusory allegations that the Town singled her out, Almazon alleged that (1) the Town had a policy of using unlicensed asbestos contractors and uncertified workers for demolitions, and (2) the Town demolished twenty-five other homes. Neither allegation provides a sufficient factual basis for a selective enforcement claim. To the contrary, the allegation that the Town demolished twenty-five other homes suggests that the Town did not impermissibly single her out.

The procedural due process claim fares no better. "The essence of due process is the requirement that 'a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.'" *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (alteration omitted) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring)). Almazon received a full opportunity to litigate this case in state court for more than a year.

Even after the state court issued the demolition order, Almazon had four months to bring her home into compliance with the Town Code. Her claim that this process was constitutionally insufficient because the Town misled the state court relies on speculation rather than plausible factual allegations. As a result, Almazon has not plausibly alleged that "she was deprived of an opportunity granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case." *Brady v. Town of Colchester*, 863 F.2d 205, 211 (2d Cir. 1988) (internal quotation marks and alterations omitted).

Because we conclude that Almazon's federal claims were properly dismissed either pursuant to *Rooker-Feldman* or for failure to state a claim, we need not address the Town's additional argument that collateral estoppel also requires us to affirm the judgment. *See* Appellee's Br. 20-22.

III

The district court did not err by denying Almazon leave to amend the complaint. "We generally review a district court's denial of leave to amend for abuse of discretion, keeping in mind that leave to amend should be freely granted when justice so requires." *Thea v. Kleinhandler*, 807 F.3d 492, 496 (2d Cir. 2015) (internal quotation marks omitted).

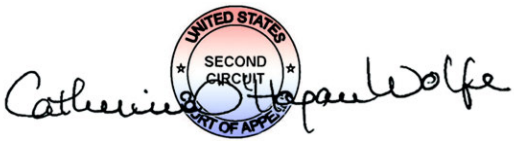
The district court did not abuse its discretion here. As the district court explained, Almazon has filed three actions concerning the demolition of her home, and each action has been dismissed. "Almazon has vigorously litigated this case since 2021," and yet "she has not corrected any pleading deficiencies despite filing (and losing) several lawsuits." *Almazon*, 2024 WL 4649915, at *7. Even now on appeal, Almazon has not explained how she would amend her complaint. "A plaintiff need not be given leave to amend if [the plaintiff] fails to specify either to the district court or to the court of appeals how amendment would cure the pleading deficiencies in [the] complaint." *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014); *see also Noto v. 22nd Century Grp., Inc.*, 35 F.4th 95, 107 (2d Cir. 2022) ("[D]enial of leave to amend is proper 'where the request gives

no clue as to how the complaint's defects would be cured.'") (quoting *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 190 (2d Cir. 2015)). We agree with the district court that "there is no doubt that granting Ms. Almazon leave to amend would be unproductive." *Almazon*, 2024 WL 4649915, at *7.

* * *

We have considered Almazon's remaining arguments, which we conclude are without merit. For the foregoing reasons, we affirm the judgment of the district court.

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



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

No. 23-CV-5583 (RER) (JMW)

DOINA ROSU ALMAZON,

PLAINTIFF,

VERSUS

TOWN OF OYSTER BAY,

DEFENDANT.

MEMORANDUM & ORDER

September 26, 2024

RAMÓN E. REYES, JR., United States District Judge:

Pro se Plaintiff Doina Rosu Almazon ("Plaintiff" or "Ms. Almazon") brings this 42 U.S.C. § 1983 civil rights action against the Town of Oyster Bay (the "Town" or the "TOBAY") for violations of her rights under the Fourth, Fifth, and Fourteen Amendments to the United States Constitution, and the New York Constitution and common law. (ECF No. 1 ("Compl.") at 13).[1,2] Defendant now moves to dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 55 ("Def.'s

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[1] Page references throughout are to those found on CM/ECF.

[2] Ms. Almazon's claims against Jamie Diamon, JP Morgan Chase Bank, National Association, and John Does #1 through #10, were previously dismissed. (ECF Minute Order dated 11/9/2023 ("Plaintiff's Motion to Dismiss/Discharge all Defendants except the Town of Oyster Bay is granted (ECF No. 34), and the Complaint is deemed Amended to name only the Town of Oyster Bay as Defendant.")).

APPX. B

Mot."); ECF No. 55-1 ("Def.'s Mem.")).[3] Ms. Almazon opposes the Town's Motion. (ECF No. 57 ("Pl.'s Opp.")). For the reasons stated herein, the Town's Motion is granted, and the Complaint is dismissed.

BACKGROUND

This is one of several federal and state lawsuits concerning Ms. Almazon's family's home in Hicksville, New York ("the Property"), within the Town of Oyster Bay. The reader's familiarity with the factual and procedural background is assumed. The following is provided to aid the reader in understanding the reasons for this decision.

In October 2012, Hurricane Sandy severely damaged the Property, forcing Ms. Almazon and her family to live elsewhere. Over the intervening years, the Property remained vacant while Ms. Almazon attempted to rebuild it. In 2014, the Town began receiving complaints from multiple residents concerning the Property's purported "dilapidated condition." (Def.'s Mot., Ex. A at 9–18 ("Ver. Pet.") ¶¶ 15, 19). After investigating those complaints,[4] on April 16, 2021, TOBAY filed suit against Ms. Almazon in Nassau County Supreme Court (the "First State Action"). (Ver. Pet.) The Town claimed the Property was in a dangerous condition in violation of Chapter 96 of the Town Code ("Dangerous Buildings and Abandoned Buildings"). (*Id.* ¶¶ 6, 8). Following litigation before Supreme Court Justice Randy Sue Marber, including an order to show cause, a

[3] TOBAY does not cite to these Rules specifically, and only refers generally to "Rule 12." (Def.'s Mot. at 1).

[4] The investigation was conducted pursuant to Town Code Section 96-5, which provides that "upon receipt of information that a building or structure may be dangerous, the Commissioner [of the Town's Department of Planning and Development] shall cause an investigation." (Ver. Pet. ¶ 9). During its investigation, TOBAY Code Compliance Inspectors visited the Property on multiple occasions and purportedly observed its continued deterioration. (*Id.* ¶¶ 13–19). As a result of these observations, Ms. Almazon was issued several notices of violation for failure to maintain the Property in a safe condition. (*Id.* ¶¶ 19–22; Ex. B).

consensual survey of the Property, an amended verified petition,[5] and second order to show cause, on January 7, 2022, Justice Marber issued a self-executing order directing Ms. Almazon to provide by May 2, 2022, a report by a licensed engineer "certifying that the Property has achieved compliance with all applicable codes, including [the Oyster Bay] Town Code", and if Ms. Almazon "failed to timely comply" the Town would "have the right to demolish" the Property on ten days written notice (the "Demolition Order"). (Def.'s Mem. at 2–3; Def.'s Mot., Ex. A at 1–3; Ex. B at 1–2; Ex. C; Ex. D at 1–4, 124–35; Ex. J at 7–8).[6]

Following the expiration of Ms. Almazon's deadline to meet the Demolition Order's conditions and certify compliance with all applicable building codes, on May 3, 2022, TOBAY provided notice to Ms. Almazon of the impending demolition. (Def.'s Mot., Ex. N). On May 13, 2022, Ms. Almazon filed an emergency order to show cause before Justice Marber, seeking a stay of the Demolition Order. (Def.'s Mot., Ex. O). Justice Marber denied the stay and permitted the demolition to move forward, noting that Ms. Almazon (1) submitted "insufficient documentation/proof to support immediate and/or ultimate relief being sought"; (2) engaged in an "improper attempt to re-submit untimely documents

[5] On September 14, 2021, Ms. Almazon submitted opposition papers to the Town's verified amended petition, in which she proffered a certification by an architect and building contractor who claimed that the Property was structurally sound and argued that the half-finished construction would be soon completed. (Def.'s Mot., Ex. E at 1–5). The Town submitted a reply on September 20, 2021, in which it characterized Ms. Almazon's contention that the repair work would soon be completed as "disingenuous" because there had been no permits filed with the Town to "allow for construction." (Def.'s Mot., Ex. F at 4).

[6] Notably, Justice Marber held that Ms. Almazon's "contentions [in opposition to the Demolition Order] have been considered and the Court finds them to be either irrelevant or without merit." (Def.'s Mot., Ex. J at 7). On January 28, 2022, Ms. Almazon filed notice of an appeal of the Demolition Order in New York Supreme Court, Appellate Division, Second Department, but never perfected that appeal. (Def.'s Mot., Ex. K; Def.'s Mem. at 3).

pertaining to underlying application"; and (3) provided "insufficient proof of compliance with the [the Demolition] Order." (Def.'s Mem. at 3–4; Def.'s Mot., Ex. O at 3).

On May 24, 2022, Ms. Almazon filed an action in federal court, *Doina Rosu v. The Town of Oyster Bay, et al.*, No. 22-cv-3073 (E.D.N.Y) (the "First Federal Action"), asserting claims under 42 U.S.C. § 1983 for "violating [her] due process rights [and] civil rights" and "illegally taking" the Property under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. (Def.'s Mot., Ex. P at 4). Ms. Almazon alleged that the Property was "structurally-sound as certified by [an] architect, builder, and engineer," and requested a stay of the Demolition Order, in addition to monetary damages. (Def.'s Mot., Ex. P at 4–6).[7] On May 25, 2022, Ms. Almazon filed a motion for an order to show cause seeking a temporary restraining to stay the demolition. (First Federal Action, ECF No. 4). On May 26, 2022, the court held an emergency hearing on Ms. Almazon's motion. (Electronic Order dated 5/25/2022; ECF No. 9 ("Minute Order for proceedings held on 5/26/2022 before Judge Gary R. Brown")). During the emergency hearing, Judge Brown noted that this dispute "has been thoroughly, thoroughly litigated" and raised the issue of whether the court had subject matter jurisdiction based on the *Rooker-Feldman* doctrine. (Def.'s Mot., Ex. Q at 41–42). Ultimately, Judge Brown denied Ms. Almazon's motion for a temporary restraining order and dismissed her complaint, finding that the *Rooker-Feldman* doctrine divested the court's subject matter jurisdiction over Ms. Almazon's claims. (Def.'s Mot., Ex. Q at 25, 41–43, 46). On June 30, 2022, the Town demolished Almazon's home. (Def.'s Mem. at 4).

[7] The Town filed opposition to her motion, attaching the relevant documents from the First State Action. (First Federal Action, ECF No. 7).

Ms. Almazon commenced the instant action on June 29, 2023, in the United States District Court for the Southern District of New York under case number 23-cv-5584 (the "Second Federal Action"). (Def.'s Mot., Ex. R at 1; ECF No. 5). On July 13, 2023, the action was transferred to this Court. (Def.'s Mem. at 4; ECF No. 4, Order dated 7/12/2023; ECF No. 5). In this Second Federal Action, Ms. Almazon alleges the same facts and claims she asserted in the First Federal Action, including violations of her civil rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. (Compl. at 6–7, 13).

On September 26, 2023, Ms. Almazon filed a separate action in Nassau County Supreme Court in relation to the demolition of her home, *Almazon v. The Town of Oyster Bay, et al.,* Index No. 615587/2023 (the "Second State Action"). (Def.'s Mot., Ex. S). Ms. Almazon argued that TOBAY and its Town Supervisor "committed Civil Contempt . . . by causing the demolition of [Ms. Almazon's] house" and "negligently caus[ed] [Ms. Almazon] mental anguish." (Def.'s Mot., Ex. S at 2–11). Specifically, Ms. Almazon claimed that TOBAY "misled" Justice Marber by providing "false testimony" in the First State Action that the Property was dangerous—attestations upon which Justice Marber relied in issuing the Demolition Order. (Def.'s Mot., Ex. S at 7–9). On March 5, 2024, Supreme Court Justice Erica L. Prager dismissed the Second State Action. (Index No. 615587/2023, NYSCEF No. 54; ECF No. 60 at 4–9). Justice Prager found that the record of the First State Action "establishes conclusively that the demolition of the [Property]" was permitted by "lawful order of the [c]ourt" because "the plain language of [the Demolition Order] *authorized* [TOBAY] to demolish the [Property] if Ms. ALMAZON failed to demonstrate [by the deadline of May 2, 2022] that the Property achieved compliance

with all applicable codes," and Ms. Almazon never provided sufficient proof of such compliance. (Index No. 615587/2023, NYSCEF No. 54 at p. 5; ECF No. 60 at 8) (emphasis added) (internal quotation marks omitted).[8]

DISCUSSION

I. Almazon's Claims and The Town's Motion to Dismiss

While Ms. Almazon's Complaint is mostly conclusory, liberally construed it raises the following claims under 42 U.S.C. § 1983 and New York state law: (1) a deprivation of due process rights under the Fifth and Fourteenth Amendments to the United States Constitution; (2) a violation of the Equal Protection Clause of the Fourteenth Amendment under a theory of selective enforcement; (3) a violation of the Fourth Amendment right to be free from unlawful searches and seizures; (4) a violation of the Takings Clause of the Fifth Amendment to the United States Constitution; (5) a violation of the Takings and Search and Seizure Clauses of the New York State Constitution; and (6) trespass, nuisance, and abuse of process under New York State common law. (Compl. at 3, 13).

The Town argues that the Complaint should be dismissed for the following reasons: (1) lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine; (2) Almazon's claims are subject to collateral estoppel under New York law; (3) Almazon's constitutional claims fail to meet the pleading requirements under § 1983; (4) Almazon fails to state a claim for violation of procedural due process; (5) Almazon fails to state a claim for selective enforcement under the Fourteenth Amendment; (6) Almazon's trespass and nuisance claims fail as TOBAY acted with lawful authority; (7) Almazon insufficiently

[8] During this period Ms. Almazon also engaged in extensive litigation in state and federal court against her mortgagor. *See Almazon v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 19 Civ. 4871 (VEC), 2020 WL 1151313, at *2–6 (S.D.N.Y. Mar. 9, 2020).

alleges an abuse of process claim; and (8) Almazon is a "[v]exatious [l]itigant." (Def.'s Mem. at 2).[9]

II. Standard of Review

The Court is mindful that when considering a motion to dismiss a *pro se* complaint, it must construe the complaint "liberally", interpreting it "to raise the strongest arguments that [it] suggest[s]." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam) (citation and internal quotation marks omitted). Nevertheless, "as both the Supreme Court and Second Circuit have repeatedly recognized," the pleading standard under Rule 8 "applies even to *pro se* litigants." *Pflaum v. Town of Stuyvesant*, 937 F. Supp. 2d 289, 299 (N.D.N.Y. 2013) (citing Fed. R. Civ. P. 8). Hence, to survive on a motion to dismiss, a complaint by *pro se* litigant must still state a plausible claim for relief. *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). As such, "mere conclusions of law or unwarranted deductions need not be accepted" as true. *Bobrowsky v. Yonkers Courthouse*, 777 F. Supp. 2d 692, 703 (S.D.N.Y. 2011) (citation and internal quotation marks omitted).

A. Rule 12(b)(1)

A case may properly be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) "when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). "In contrast to the standard for a motion to dismiss for failure to state a claim under Rule 12(b)(6), a 'plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists.'" *Mac Pherson v. State St. Bank & Trust Co.*, 452 F. Supp. 2d 133, 136 (E.D.N.Y. 2006) (quoting *Reserve Solutions Inc. v. Vernaglia*,

[9] Because I find that there is no subject matter jurisdiction over Ms. Almazon's claims and the complaint fails to state a claim of municipal liability under Monell, I decline to TOBAY's other arguments for dismissal.

438 F. Supp. 2d 280, 286 (S.D.N.Y. 2006)), *aff'd*, 273 F. App'x 61 (2d Cir. 2008). In resolving a motion to dismiss for lack of subject matter jurisdiction, evidence outside of the pleadings may be considered. *Rivera v. Ndola Pharm. Corp.*, 497 F. Supp. 2d 381, 387 (E.D.N.Y. 2007) (citing *Makarova*, 201 F.3d at 113). A motion to dismiss based on the *Rooker-Feldman* doctrine implicates a court's subject matter jurisdiction and is therefore considered pursuant to Federal Rule of Civil Procedure 12(b)(1). *See Redmond v. Bank of New York Mellon Corp.*, 697 Fed. App'x 23, 24 (2d Cir. 2017) (citing *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014)); *MacPherson v. Town of Southampton*, 738 F. Supp. 2d 353, 362 (E.D.N.Y. 2010).

B. Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a defendant to move to dismiss an action for "failure to state a claim upon which relief can be granted." To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679.

When considering a motion to dismiss, a court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Williams v. Richardson*, 425 F. Supp. 3d 190, 200 (S.D.N.Y. 2019) (citing *Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 237 (2d Cir. 2007)). When a plaintiff is appearing *pro se*, the court may also accept as true well

pleaded factual allegations in her opposition to a motion to dismiss. *See Walker v. Schult*, 717 F.3d 119, 122 n.1 (2d Cir. 2013); *Jackson v. N.Y. State Off. of Mental Health — Pilgrim Psychiatric Ctr.*, No. 23-CV-4164 (JMA) (ARL), 2024 WL 1908533, at *5 (E.D.N.Y. May 1, 2024)." Legal conclusions and '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,' are not entitled to a presumption of truth." *Elliott v. City of New York*, No. 23 Civ. 352 (AT) (VF), 2024 WL 1119275, at *4 (S.D.N.Y. Mar. 14, 2024) (quoting *Iqbal*, 556 U.S. at 678). It is "well established that a district court may rely on matters of public record," including prior filings in an action, in deciding motions to dismiss under either Rule 12(b)(6) or 12(b)(1). *See Burfeindt v. Postupack*, 509 Fed. Appx. 65, 67 (2d Cir. 2013) (summary order) (citation omitted).

III. The *Rooker-Feldman* Doctrine Bars Plaintiff's Claims

Defendant argues that this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) (holding that only the Supreme Court can entertain a direct appeal from a state court judgment); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983) (finding that federal courts do not have jurisdiction over claims which are "inextricably intertwined" with prior state court determinations). I agree.

The *Rooker-Feldman* doctrine stands for the proposition that "lower federal courts possess no power whatever to sit in direct review of state court decisions." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970); *accord Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005) ("[F]ederal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments."). The doctrine is aimed at "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings

commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005).

The Second Circuit has identified four requirements for the application of the *Rooker-Feldman* doctrine: (1) the federal-court plaintiff must have lost in state court; (2) the plaintiff must complain of injuries caused by a state-court judgment; (3) the plaintiff must invite the district court review and rejection of that judgment; and (4) the state-court judgment must have been rendered before the district court proceedings commenced. *E.g.*, *Vossbrinck*, 773 F.3d at 426 (citing *Hoblock*, 422 F.3d at 85). "The first and fourth of these requirements may be loosely termed procedural; the second and third may be termed substantive." *Hoblock*, 422 F.3d at 85. "While all four requirements must be met to preclude jurisdiction, the second requirement is the 'core' requirement." *Francis v. Fed. Nat'l Mortg. Ass'n*, No. 20-CV-5863 (EK) (MMH), 2023 WL 2707098, at *5 (E.D.N.Y. Mar. 30, 2023) (citation omitted). This "requirement is only satisfied if 'the third party's actions are produced by a state court judgment and not simply ratified, acquiesced in, or left unpunished by it.'" *Id.* (quoting *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 94 (2d Cir. 2015)).

The first and fourth "procedural" requirements are satisfied here as Almazon lost in state court when the Demolition Order was entered on January 7, 2022, more than one year before she filed this action on June 29, 2023. (Def.'s Mot., Ex. J at 8; Ex. R at 79–80). The second and third "substantive" requirements are also satisfied.

The second requirement has been met because Almazon complains of injuries caused by the state court judgment ordering the demolition of her home.[10] The gravamen of her Complaint is that TOBAY was not entitled to demolish her home because it was not dangerous, as the Town had claimed, which was the very issue presented to—and decided by—Justice Marber. (Compl. at 6–7, 10–13; Def.'s Mot., Ex. J at 2–8 ("[T]he [TOBAY] seeks the issuance of a search warrant to conduct a survey of the Property . . . , to have the Property declared a nuisance[,] and for the demolition of same in the event that such survey deems the structure to be 'dangerous' as defined by the Town Code.")). Although Almazon now argues in conclusory fashion that her federal and state constitutional and common law rights were violated, such contentions do not change the fact that the injuries of which she complains were caused by the Demolition Order. *See, e.g.*, *Caldwell v. Gutman, Mintz, Baker & Sonnenfeldt, P.C.*, 701 F. Supp. 2d 340, 348–49 (E.D.N.Y. 2010) (plaintiff's claims that defendants engaged in vexatious litigation in state court were barred because a state court judgment was "one of the main events in th[e] pattern" of allegedly vexatious litigation that caused plaintiff's injury); *Lomnicki v. Cardinal McCloskey Servs.*, No. 04 Civ. 4548 (KMK), 2007 WL 2176059, at *4–5 (S.D.N.Y. July 26, 2007) (plaintiff who sought damages for discrimination by family court, rather than review of family court's determination, was barred on *Rooker-Feldman* grounds because her injury was "caused by the Family Court judgment").

Plaintiff now also appears to contend that TOBAY failed to credit her evidence that her home was not dangerous and misled Justice Marber into believing that it was. (Pl.'s

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[10] *See, e.g.*, Compl. at 6 ("Statement of Claim" - "House *is Demolished all illegally*") and 7 ("Injuries" – "Then when its 70% done; structurally sound *allows Town of Oyster Bay to Demolish my home.*"); Pl.'s Opp. ¶ 21 (". . . *the judge to allow the Defendant to demolish the Plaintiff's house.*") (emphases added).

Opp. ¶¶ 20–29). In addition to being conclusory, such contentions are beside the point. Ms. Almazon had the opportunity, of which she availed herself over the course of the more than one year of litigation in state court, to present evidence regarding these challenges in her efforts to obtain a favorable decision. Although Plaintiff now raises new claims of the deprivation of her constitutional rights as a result of the state court judgment, that "does not change the injury about which she complains," which was caused by the state court's decision. *Voltaire v. Westchester Cnty. Dep't of Soc. Servs.*, No. 11 Civ. 8876 (CS), 2016 WL 4540837, at *11 (S.D.N.Y. Aug. 29, 2016) (citation omitted); *see also Castiglione v. Papa, et al.*, 423 F. App'x 10, 13 (2d Cir. 2011) ("As noted by the District Court, [plaintiff] cannot avoid application of the *Rooker-Feldman* doctrine simply by 'presenting in federal court a legal theory not raised in state court,' for example, by framing her claims under §§ 1983 or 1985." (quoting *Hoblock*, 422 F.3d at 86)). Indeed, the Second Circuit has long held that a "federal plaintiff cannot escape the *Rooker-Feldman* bar simply by relying on a legal theory not raised in state court." *Hoblock*, 422 F.2d at 87. Thus, the second requirement is met.

The third requirement has also been satisfied here because Almazon can only prevail if this Court reviews and rejects the state court's judgment. Because Plaintiff's factual allegations are inextricably intertwined with the state court's judgment, she has invited this Court to review and reject that judgment. Similarly, Almazon cannot avoid the *Rooker-Feldman* doctrine by attempting to seek monetary damages, as opposed injunctive relief. *E.g.*, *Lomnicki,* 2007 WL 2176059, at *5 ("Similarly, Plaintiff does not avoid *Rooker-Feldman* by seeking damages instead of injunctive relief. In order to award damages to Plaintiff, the Court would have to review the [state court] decision . . . .").

Accordingly, all four requirements of the *Rooker-Feldman* doctrine are satisfied, and consequently, this Court lacks subject matter jurisdiction over Ms. Almazon's claims.

IV. Almazon Has Failed to Plead Municipal Liability Under *Monell*

Regardless of whether the Court lacks subject matter jurisdiction over Ms. Almazon's claims under the *Rooker-Feldman* doctrine, Ms. Almazon has failed to sufficiently plead any claim against TOBAY under 42 U.S.C. § 1983.[11]

"[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory," *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); rather, liability will attach only where the action of the municipality itself can be said to have caused the harm. *See Nagle v. Marron*, 663 F.3d 100, 116 (2d Cir. 2011). "[A] municipality can be held liable under Section 1983 if the deprivation of the plaintiff's rights under federal law is caused by a governmental custom, policy, or usage of the municipality." *Jones v. Town of East Haven*, 691 F.3d 72, 80 (2d Cir. 2012) (citing *Monell*, 436 U.S. at 690–91). Thus, a municipality may be held liable when "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell*, 436 U.S. at 690. To establish a Section 1983 claim against a local government, "the plaintiff must allege facts showing (1) the existence of a municipal policy, custom, or practice, and (2) that the policy, custom, or practice caused the violation of the plaintiff's constitutional rights." *Wrobleski v. City of New York*, No. 18 Civ. 8208 (LLS), 2018 WL 10604749, at *4 (S.D.N.Y. Nov. 5, 2018) (citation omitted); *see also Lucente v. Cnty. of Suffolk*, 980 F.3d 284, 297 (2d Cir. 2020)

[11] "Section 1983 'is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes.'" *Conklin v. Cnty of Suffolk*, 859 F. Supp. 2d 415, 438 (E.D.N.Y. 2012) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)).

(quoting *Wray v. City of New York*, 490 F.3d 189, 195 (2d Cir. 2007)); *Myftari v. Dep't of Fin.*, No. 23-CV-02558 (HG), 2023 WL 3628584, at *2 (E.D.N.Y. May 24, 2023).

"To satisfy the policy-or-custom requirement, a plaintiff may challenge an 'express rule or regulation,' or the plaintiff may allege that the challenged practice 'was so persistent or widespread as to constitute a custom or usage with the force of law' or that the facts 'imply the constructive acquiescence of senior policy-making officials.'" *Green v. Dep't of Educ. of City of New York*, 16 F.4th 1070, 1077 (2d Cir. 2021) (quoting *Littlejohn v. City of New York*, 795 F.3d 297, 315 (2d Cir. 2015)). "However, a general and conclusory allegation of a municipal policy or custom fails to state a plausible claim." *Id.* (internal quotation marks omitted); *see also Weaver v. City of N.Y.*, No. 13-CV-20 (CBA) (SMG), 2014 WL 950041, at *7 (E.D.N.Y. Mar. 11, 2014) ("[V]ague and conclusory assertions are not sufficient to state a claim of municipal liability under *Monell*.").

The Complaint itself is devoid of any factual allegations that the Town of Oyster Bay maintained a policy or custom that violated Almazon's or anyone else's constitutional rights. (*See* Compl., in toto). Nothing in the Complaint's description of the challenged conduct suggests that there was any widespread policy or custom in place, or that the Town was motivated by any impermissible motives. (*Id.*) Indeed, Ms. Almazon does not argue that TOBAY's building codes themselves constitute an unconstitutional custom or policy. The only factual allegations regarding an unconstitutional policy or custom are contained in Almazon's Opposition to TOBAY's Motion to Dismiss. (Pl.'s Opp. ¶¶ 5–8, 18). Therein, Almazon alleges that from 2017 to 2022 the Town had a policy of using "unlicensed asbestos contractors and uncertified workers" to demolish homes containing asbestos in violation of New York State regulations. (*Id.*) These threadbare, conclusory

allegations, however, are insufficient to establish a plausible *Monell* claim. Even if true, the policy of using unlicensed contractors and uncertified workers to demolish homes containing asbestos in violation of a New York State regulations did not cause the deprivation of Almazon's constitutional rights. Put differently, *how* Almazon's house was actually demolished—using unlicensed contractors and uncertified workers—did not cause her constitutional injuries. Rather, it was everything that preceded the demolition. If those actions were not due to a policy or custom, and Ms. Almazon does not claim they were, she has no *Monell* claim. By failing to plead facts with the required level of specificity, Ms. Almazon's allegations amount to no more than naked assertions "supported by mere conclusory statements," which are "not entitled to the assumption of truth" to withstand a Rule 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 678–79. As such, Almazon fails to sufficiently allege a policy or custom as required to assert a claim for municipal liability under *Monell*, and her complaint is dismissed.

V. Almazon's State Law Claims Are Dismissed

As all of Plaintiff's federal claims have been dismissed, the Court declines to exercise supplemental jurisdiction over any remaining state law claims (*e.g.*, violation of the New York State Constitution, trespass, nuisance, abuse of process). *See* 28 U.S.C. § 1367(c)(3) (permitting a district court to decline to exercise supplemental jurisdiction over a claim if it has dismissed all claims over which it has original jurisdiction); *Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (noting that the decision whether to exercise supplemental jurisdiction lies within the discretion of the district court); *Middleton v. United States*, No. 10-CV-6057 (JFB) (ETB), 2012 WL 394559, at *1 (E.D.N.Y. Feb. 7, 2012) (declining to exercise supplemental jurisdiction over state claims, because no

federal claims survived a motion to dismiss); *Williams v. Berkshire Fin. Grp., Inc.*, 491 F. Supp. 2d 320, 329 (E.D.N.Y. 2007) (declining supplemental jurisdiction where no federal claims remained and case had not advanced beyond the pleading stage).

VI. Leave to Amend is Denied

Courts should freely grant leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). This is especially so in *pro se* cases, where complaints are construed liberally and courts grant *pro se* plaintiffs leniency to amend so that pleading deficiencies can be cured. Nevertheless, "leave to amend is not required where it would be futile," even with *pro se* plaintiffs. *Segal v. New York State Unified Ct. Sys.*, No. 21 Civ. 2545 (LTS), 2021 WL 1841768, at *5 (S.D.N.Y. May 7, 2021) (citing *Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011)). And, where there is a substantive pleading deficiency, such as lack of subject-matter jurisdiction, permitting leave to amend to add more specific factual allegations will not "cure" the deficiencies, making such an attempt futile. *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Hence, as with the case here, when the Court cannot exercise subject-matter jurisdiction due to the *Rooker-Feldman* doctrine, this jurisdictional bar cannot be cured by repleading. *Anghel v. New York State Dep't of Health*, 947 F. Supp. 2d 284, 299 (E.D.N.Y. 2013), *aff'd*, 589 F. App'x 28 (2d Cir. 2015).

Given that Ms. Almazon has now filed three actions concerning the same dispute—one in state court and two in federal court, which all contain similar claims based on the same facts—and that all three previous actions were dismissed (including a prior federal action on the basis of lack of subject-matter jurisdiction under *Rooker-Feldman*), there is no doubt that granting Ms. Almazon leave to amend would be unproductive. Additionally, because Ms. Almazon has vigorously litigated this case since 2021, there is no concern for undue prejudice against her, and the record makes clear that she has not corrected

any pleading deficiencies despite filing (and losing) several lawsuits, including the Second State Action which was dismissed just earlier this year. As such, leave to replead is denied.

CONCLUSION

For the reasons set forth above, the Town's Motion to Dismiss is granted and the action is dismissed. The Clerk of the Court is respectfully requested to enter judgment accordingly, close this case, and mail a copy of this order and the judgment to Ms. Almazon, and note such mailing on the docket.

SO ORDERED.

Hon. Ramón E. Reyes, Jr. Digitally signed by Hon. Ramón E. Reyes, Jr. Date: 2024.09.26 15:10:33 -04'00'

RAMÓN E. REYES, JR.
United States District Judge

Dated: September 26, 2024
Brooklyn, NY

APPX. B