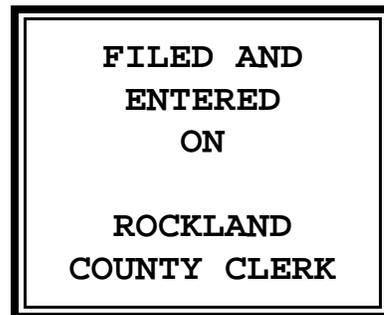


SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

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In the Matter of the Application of THE VILLAGE OF SPRING VALLEY, NEW YORK, relative to acquiring title in fee simple to certain real property located along North Main Street and North Madison Avenue in the Central Business District of such Village to effectuate the Village's Urban Renewal Plan.

Index No: 2005-004304

DECISION & ORDER

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EMINENT DOMAIN ADVANCE PAYMENTS : MOTION TO STRIKE PREJUDICIAL MATERIAL

In this most recent case involving advance payments<sup>1</sup> the Condemnor/Petitioner Village of Spring Valley, New York [ " the Village " ] seeks an Order pursuant to C.P.L.R. § 3024(b) and E.D.P.L. §§ 504 and 703 striking from the Notice of Claim [ " the Claim " ] filed by the Claimant G & J 59, LLC [ " the Claimant " ] that portion of paragraph 7 which states " Amount Tendered as Advance Payment \$465,000.00 " on the grounds that it is " prejudicial and prohibited "<sup>2</sup>. In addition, the Village seeks an Order " requiring Claimant to serve an amended Claim pursuant to CPLR 3024(b) which bears no reference to the advance payment "<sup>3</sup>.

### No One Else Has Ever Complained

The Claimant opposes the relief sought by the Village on the grounds that (1) " I have never had anyone object to identifying the amount of the offer made pursuant to EDPL § 303 in the Notice of Claim " and (2) " The offers are a public record and thus the disclosure of the claim does not otherwise prejudice the condemnor in any way "4.

### Factual Background

This proceeding arises out of this Court's Order [ " the Order<sup>5</sup> ] granting the Village's Petition<sup>6</sup> to acquire the Claimant's property by " the power of eminent domain, pursuant to, *inter alia*, § 1-102 of the Village Law of the State of New York...and §§ 74 and 506 of the General Municipal Law of the State of New York "7.

### The Notice Of Claim

On February 28, 2006, the Claimant served the Village with a Notice of Claim [ " the Claim<sup>8</sup> " ] seeking damages of \$435,000.00 " together with interest at the statutory rate and counsel and expert appraisal fees " in addition to the \$465,000.00 " Amount Tendered as Advance Payment " which, evidently, the Claimant accepted.

DISCUSSION

The Village asserts that the language " Amount Tendered As Advance Payment \$465,000.00 " is objectionable and should be stricken from the Claim [ pursuant to C.P.L.R. § 3024(b), E.D.P.L. §§ 504, 703 ]. Because advance payments offered or made by condemnors in the course of an eminent domain proceeding are deemed to be offers of settlement, any reference to an advance payment within a claim for additional compensation is both prejudicial and prohibited "9.

C.P.L.R. § 3024(b)

C.P.L.R. § 3024(b) provides that " A party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading ".

E.D.P.L. § 504

E.D.P.L. § 504 provides, in part, " The claim...shall include... a general statement of the nature and type of damages claimed ".

E.D.P.L. § 703

E.D.P.L. § 703 provides that the C.P.L.R,. " shall apply to practice and procedure ( in E.D.P.L. proceedings )...except where other procedure is specifically provided by this law or rules...".

Evidence Of Advance Payments Inadmissable At Trial

It is clear that when and if the Claimant seeks to introduce the Claim [ containing the language " Amount Tendered As Advance Payment \$465,000.00 " ] as a trial exhibit that the Village would be on solid ground objecting to its admission into evidence [ See e.g., Brummer v. State of New York, 25 A.D. 2d 245, 269 N.Y.S. 2d 604 ( 4<sup>th</sup> Dept. 1966 ) ( " This decision [ to admit into evidence at trial an ` Agreement for Partial Payment ` ]...was contrary to the well-accepted general rule that an offer of settlement or an offer of purchase is inadmissable to show market value...The entire philosophy...could be frustrated and thwarted if partial-settlement offers were to be permitted in evidence and used as a basis for determination of value " ); Cook v. State of New York, 105 Misc. 2d 1040, 430 N.Y.S. 2d 507 ( Ct. Cl. 1980 ) ( " The settled law that an advance payment agreement...( is ) inadmissable is based on four major considerations...4. The statement of value in the advance payment agreements are offers for settlement purposes and excluded for public policy reasons as settlements are to be encouraged and such offers may of necessity include an increment of value attributable to the desire to prevent litigation...Offers made in the course of settlement negotiations are not competent evidence as to the

value of a claim " ); Manwaring v. State of New York, 72 Misc. 2d 486, 339 N.Y.S. 2d 891 ( Ct. Cl. 1972 )( " If the initial appraisal was prepared solely for litigation and/or negotiation and possible settlement of this claim, it is not admissible as evidence...we also consider the statutorily required 75%...partial payment to be an integral part of the negotiation and possible settlement procedure " )] unless the offending material were redacted from the Claim [ See e.g., Cook, supra, at 105 Misc. 2d 1041 ( " Another copy of the document with the dollar amounts blanked out was marked for identification and taken under consideration by the court " )].

#### The Motion Is Denied As Unnecessary

The Village's motion seeks relief which is unnecessary and is denied. To the extent the Village's motion may be considered a *motion in limine* seeking an evidentiary ruling on the admissibility of any evidence at trial of the receipt of an advance payment by the Claimant, the Court has just so ruled.

The foregoing constitutes the Decision and Order of this Court.

Dated: October 13, 2006  
White Plains, N.Y.

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HON. THOMAS A. DICKERSON  
JUSTICE SUPREME COURT

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ENDNOTES

1. See e.g., Matter of Village of Port Chester, 5 Misc. 3d 1031 ( West. Sup. 2004 ) ( " The purpose of real property tax refunds ,

however, is to compensate tax payers for paying more taxes than they should have, typically, several years ago. While such a windfall is welcome there is none of the urgency and, perhaps, even desperation, which condemnees face when their property is taken in a condemnation proceeding. This is why advance payments have been mandated, why advance payments should be paid sooner rather than later and why statutory interest of 6% should be imposed " ).

2. Petitioner's Notice of Motion dated March 10, 2006 at p. 1.

3. Affirmation of Lawrence A. Zimmerman dated March 10, 2006 [ " Zimmerman Aff. " ] at para. 7.

4. Affirmation In Opposition of Richard H. Sarajian dated April 1, 2006 [ " Sarajian Aff. " ] at para. 3.

5. Zimmerman Aff. at para. 3 and Ex. 1 ( Order dated August 5, 2005 ) [ " the Order " ].

6. Zimmerman Aff. at para. 3 and Ex. 2 ( Verified Petition dated June 21, 2005 ) [ " the Petition " ].

7. Petition at para. 2.

8. Zimmerman Aff. at Ex. C.

9. Petitioner's Memorandum of Law dated March 10, 2006 [ " P. Memo. " ] at pp. 1-2.