

# [Condemnation: Are Exercised Options Best Evidence of Property Value?](#)

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### **Body**

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In condemnation proceedings, the issue of option contracts may arise for a number of reasons, including: (1) whether a party has standing to make a claim for just compensation; or (2) whether an unexercised option has compensable value. This article addresses a third issue: whether the purchase price of an exercised purchase option is best evidence of the market value of the condemned subject property.

An option contract is "an agreement to hold an offer open; it confers upon the optionee [(one who receives an option from another; usually a purchaser, renter, lessee, tenant, borrower)], for consideration paid, the right to purchase at a later date."<sup>1</sup> "The most striking feature of the contractual arrangement known as an "option" is that while the optionor [(one who grants an option to another; usually a seller, vendor, lessor, landlord, lender)] cannot act in derogation of the terms of the option agreement, the optionee is not bound until the option is actually exercised. Thus, until the optionee gives notice of his intent to exercise the option, the optionee is free to accept or reject the terms of the option. [A]n option to purchase an interest in real property is in effect a conditional contract for a future conveyance of land[.]"

Option contracts abound and cover many legal choices. One common option is the opportunity for a lessee to purchase the property previously rented. Often, the contract is drafted a number of years before the exercise of the purchase option. The purchase price may be stale and may not reflect the current real estate market. This leads to an interesting valuation question if, after the purchase option is exercised, the property is the subject of condemnation. Is a condemned property's purchase price in an exercised purchase option the best evidence of the condemned property's market value in a condemnation proceeding?

The short answer is, of course, it depends. Like an "abnormal" recent sale of a property, a property's purchase price in an exercised purchase option may not be the best evidence of its market value depending on multiple factors like the relation between the contracting parties, the age of the option clause, and the trend of the market.

'Abnormal' Recent Sales

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<sup>1</sup> [Kaplan v. Lippman, 75 N.Y.2d 320, 324-25 \(1990\)](#) (citations omitted); see also, 1 Williston, Contracts §61B [3d ed.1957]; Restatement [Second] of Contracts §25).

## Condemnation: Are Exercised Options Best Evidence of Property Value?

The New York Court of Appeals recognized that, in both eminent domain and tax certiorari proceedings, there is no fixed method for determining property market value.<sup>2</sup> The ultimate purpose of valuation is to arrive at a fair and realistic value of the subject property. Any valuation method is acceptable as long as it is fair and nondiscriminating. Most relevant, though, is that the court noted, "The best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy."<sup>3</sup>

However, "value and price are not necessarily synonymous."<sup>4</sup> The Court of Appeals cited *People ex rel. Buck v. Rapp* for this proposition.<sup>5</sup> *Buck v. Rapp*, a certiorari proceeding reviewing tax assessments, referred to the Great Depression as a "recession" and stated that "the old standard of value has been redefined by the Court of Appeals and adapted to meet the needs of the times. While these conditions prevail, fair value and full value cannot be rested on sales prices alone."<sup>6</sup>

Further, if the recent sale of the subject property is established as "abnormal," it is not relevant or reflective of market value.<sup>7</sup> As summed up by the Court of Appeals regarding valuation, "No hard and fast rule can be laid down that will cover every case or fix in advance the limit of the matters that may be taken into consideration[.]"<sup>8</sup>

*Gold-Mark 35 Associates v. State* is an example of an "abnormal" recent sale.<sup>9</sup> In *Gold-Mark*, the state condemned 2.835 acres of the claimant's 44.5 acres to widen Routes 100 and 35 in the Town of Somers, Westchester County. The claimant property owner assembled the parcel by purchasing various smaller parcels for sale during the two years prior to the condemnation. The claimant's appraiser indicated that the sale prices were artificially depressed because the sellers of these smaller parcels that the claimant purchased were aware of the proposed condemnation to widen the highways and were motivated to sell to avoid the possibility of litigation. (Further, the appraiser testified that the value of the assemblage was worth more than the value of its parts. Last, the appraiser noted that from the dates of sale to the date of condemnation, real estate values were increasing in the area of the subject property.)

The "Court of Claims specifically declined to consider the price that the claimant paid for the various parcels during the course of the assemblage of the property." The Second Department agreed, holding that the recent sales were "abnormal" and therefore not reflective of market value.

All of the preceding supports the proposition that if a purchase option, like a regular sale, is also "abnormal" or is not a fair and realistic value of the condemned subject property, then the purchase price of the option is not best evidence for valuation and, in fact, is not evidence at all and should be dismissed or at least heavily discounted.

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<sup>2</sup> [Allied v. Town of Camillus, 80 N.Y.2d 351, 590 N.Y.S.2d 417 \(1992\).](#)

<sup>3</sup> "Absent that evidence, however, the courts have traditionally valued property by one of three methods: comparable sales, capitalization of income or reproduction cost less depreciation." *Id.* at 356; see also [Plaza Hotel Assoc. v. Wellington Assoc., 37 N.Y.2d 273, 372 N.Y.S.2d 35 \(1975\)](#); [Woolworth v. Tax Comm. of City of N.Y., 20 N.Y.2d 561, 285 N.Y.S.2d 604 \(1967\)](#); 4 Nichols, Eminent Domain (3d ed.), §12.311(1).

<sup>4</sup> [Plaza Hotel Assoc., 37 N.Y.2d at 277.](#)

<sup>5</sup> [36 N.Y.S.2d 790 \(Sup. Ct. Monroe Co. 1942\)](#), aff'd, [266 A.D. 709, 41 N.Y.S.2d 185 \(4th Dept. 1943\)](#), aff'd sub nom. ***People ex rel. Buck v. Woodworth, 266 A.D. 709, 41 N.Y.S.2d 186 (4th Dept. 1943).***

<sup>6</sup> [36 N.Y.S.2d at 794](#) (citing [Heiman v. Bishop, 272 N.Y. 83 \(1936\)](#); [In re Bd. of Water Supply of City of N.Y., 277 N.Y. 452 \(1938\)](#); [People ex rel. Ryder v. Woodworth, 178 Misc. 921, 36 N.Y.S.2d 786 \(Sup. Ct. Monroe Co. 1942\)](#)).

<sup>7</sup> See [Metro. Transp. Auth. v. Washed Aggregate Res., 102 A.D.3d 787, 958 N.Y.S.2d 405 \(2d Dept. 2013\)](#); see also *Plaza Hotel Assoc.*; *Woolworth*.

<sup>8</sup> [In re Bd. of Water Supply of City of N.Y., 277 N.Y. at 457-48.](#)

<sup>9</sup> [210 A.D.2d 377, 620 N.Y.S.2d 110 \(2d Dept. 1994\).](#)

## Condemnation: Are Exercised Options Best Evidence of Property Value?

A number of cases confirm this view.  
Option Price and Real Value

Although the Court of Appeals in *Plaza Hotel Associates*, ultimately held on the facts presented that the option purchase price of an interest in land was best evidence of market value because there was no evidence of unusualness or abnormality in the transaction,<sup>10</sup> Chief Judge Charles Breitel, while concurring in result, disagreed that the option purchase price had "controlling significance in determining the value" of the property. He stated that options are unique to its situation. "The important thing, however, is that the unique purchase of the option under the unique economic factors applicable to this unique transaction provided no reliable, let alone a conclusive, index of value which a price fixed between willing buyers and willing sellers in the open market would represent." In *Belvedere v. State*, the state acquired by condemnation 186.232 acres of vacant land in the Town of Newburgh, Orange County, for the extension of Stewart Airport.<sup>11</sup> On appeal, the state argued that the lower court's condemnation award was excessive because "it was higher than the amount for which the claimant property owner had sold an option on the appropriated property 18 months prior to the appropriation." The court dismissed the argument, reasoning that "while such a transaction has probative value, the weight of such evidence...is not conclusive on a record such as this where other comparable sales, properly adjusted, tend to establish a higher value."

In *Kowalsky v. Familia*, the court held that an option to purchase property was void and invalid because of the great disparity between the option price and the property's market value.<sup>12</sup> The court stated that, "[v]iewed in the historical light of the last few decades of soaring real estate values, not to mention the impact of inflation alone, the fixed price [of the option], although perhaps initially reflective of present value, soon becomes burdensome and eventually oppressive."

In a condemnation proceeding, the court in *Andrews v. State* stated that option purchase prices must be treated with great caution when used to indicate value and may be of no evidentiary use due to remoteness in time and possible substantial changes that may have occurred in the real value of a property.<sup>13</sup>

Last, in another condemnation proceeding, *In re Armory Board*, the court acknowledged that the option price was possibly half the amount of the value of the property.<sup>14</sup> The lease contained an option to purchase for a set amount and that the option could be exercised at any time during the 21-year lease. The court noted, "It will be observed that even now, according to the appraisal of the commissioners, the land is worth more than the consideration money specified in the option.... The option is, in my opinion, void and unenforceable, and, in valuing the contract, should have been disregarded."

### Conclusion

To summarize, options are based on context, unique to each transaction. Perhaps the option was drafted during the recent recession and reflects deflated real property value and not the current resurgence of the real estate market. Certainly, an option drafted during our recent period of "recession," like in *Buck v. Rapp*, is not reflective of market value coming out of a recession when market prices are rising, *Gold-Mark*. Perhaps the parties did not negotiate the option at true arm's length.

For example, some leases may contain a favorable (lower) purchase price because the lessee and lessor have a close, long, or favorable relationship. Perhaps the option price is below market value and does not reflect that other services or values are provided and discussed in other contracts between the parties. Perhaps the sale is part of an

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<sup>10</sup> [37 N.Y.2d at 278](#).

<sup>11</sup> [51 A.D.2d 400, 381 N.Y.S.2d 903 \(3d Dept. 1976\)](#).

<sup>12</sup> [71 Misc.2d 287, 293, 336 N.Y.S.2d 37, 43 \(Sup. Ct. Orange Co. 1972\)](#).

<sup>13</sup> [19 Misc.2d 217, 225, 188 N.Y.S.2d 854, 862 \(Ct. Cl. 1959\)](#).

<sup>14</sup> [29 Misc. 174, 182, 60 N.Y.S. 882, 888 \(Sup. Ct. Spec. Term N.Y. Co. 1899\)](#).

## Condemnation: Are Exercised Options Best Evidence of Property Value?

assemblage where the assemblage value is greater than the sum of the parts. Perhaps the purchase price was motivated by fear of an impending condemnation. Perhaps "condemnation blight" depreciated the purchase price. All of these examples qualify as transactional "abnormalities" that may discredit a recent sale or option price. Thus, when confronted with a low value exercised option to purchase the subject property prior to its condemnation, the condemner should not blindly assume that the option price is best evidence of the subject property's market value. At the same time, the condemnee must distinguish why the option price is "abnormal" and does not reflect market value. This is especially true when the condemnee has other comparable sales, properly adjusted, that tend to establish a higher value, Belvedere. However, both condemners and condemnees may disregard these concerns if they choose. They have that option.

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