

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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NIAGARA STREET RENOVATION, LLC

Plaintiff

**MEMORANDUM  
DECISION**

vs.

Index No. 12/06

CIMINELLI INTERNATIONAL SERVICES, LLC,  
AND RAYMOND L. MCGARVEY AND JAMES  
VOSS, AS THE EXECUTORS OF THE ESTATE  
OF STEPHEN B. MCGARVEY

Defendants

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BEFORE: **HON. JOHN M. CURRAN, J.S.C.**

APPEARANCES: **Jaeckle Fleischmann & Mugel, LLP**  
Attorneys for Plaintiff  
Howard S. Rosenhoch, Esq., of Counsel

**Watson, Bennett, Colligan, Johnson & Schechter, LLP**  
Attorneys for Defendants  
David J. Colligan, Esq., of Counsel  
Seth J. Andrews, Esq., of Counsel

**CURRAN, J., J.S.C.**

This matter came before the Court for an evidentiary hearing in fulfillment of Justice Fahey's Memorandum Decision dated December 19, 2006. The purpose of the hearing was to determine the fair and reasonable market value of 990 Niagara Street, thereby enabling computation of a deficiency judgment, if any, against the defendants.

The hearing was conducted on May 18, 2007. The Court heard testimony and received into evidence various exhibits, including the appraisal reports prepared by both

appraisers. The parties thereafter stipulated to waive the submission of any further proof. The Court has now reviewed all of this evidence in order to make a determination of the fair and reasonable market value of the subject property.

The Court is persuaded that the best evidence of value in this case are the comparable sales in the closest proximity to the subject property. Here, there are two in the same area and on the same side of the same street. The area in question bears a common industrial history that has seen a significant downturn in occupancy over the past decade.

The best of the two comparables is at 1010 Niagara Street which was used by both appraisers. This is the best example of value not only because it is the only one used by both appraisers and is on the same street and in the same area, but also because it is directly adjacent to the property in question and underwent a sale in March of 2004.

The property at 1010 Niagara Street is newer and has only one story. The appraisers agree that both of these factors make the property at 1010 Niagara Street more valuable on a square footage basis. Accordingly, both appraisers make adjustments downward to equate the value of 1010 Niagara Street to the subject property.

Plaintiff asserts that there should be a further downward adjustment based on the necessity to make repairs to the subject property before a proper sale could be accomplished. Specifically, plaintiff claims: (1) repairs should be made with respect to the electrical system within the building; (2) underground tanks should be removed from the building for environmental reasons; and (3) a wall of the building should be repaired requiring both engineering and masonry work. It is significant, however, that the environmental issues are the same as were in existence at the time the property was acquired by both defendant, Ciminelli

International Services, LLC (“CIS”), and plaintiff, Niagara Street Renovation, LLC. Moreover, it is significant that the repairs to the electrical work and the wall are a matter of aging. It is likewise material that the subject property has remained vacant for most of the time it was owned by CIS, and that the property is therefore in approximately the same shape as it was at the time it was acquired by CIS (except for further aging). Based on this analysis, the Court will make no further adjustment in the valuation based solely on the alleged need for these repairs as the appraisal reports both include consideration of the building’s age and condition.

Given that 1010 Niagara Street is the best evidence of value of all the comparables for the reasons discussed above, the Court will strike a balance between the two appraisal reports and arrive upon a fair and reasonable market value at \$9.29 per square foot. According to defendant’s appraisal, the square footage is 50,444 square feet. This results in the Court’s conclusion that the fair and reasonable market value of the subject property is \$468,624.76.

Plaintiff’s counsel should prepare the appropriate Order on this Memorandum Decision and settle it with defendant’s counsel.

DATED: June 1, 2007

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**HON. JOHN M. CURRAN, J.S.C.**