

**CERTIFIED FOR PUBLICATION**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CATHEDRAL CITY REDEVELOPMENT  
AGENCY,

Plaintiff and Respondent,

v.

SAM STICKLES, Individually and as  
Trustee, etc. et al.,

Defendants and Appellants.

E036456

(Super.Ct.No. INC032826)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Christopher J. Sheldon,  
Judge. Affirmed.

The Law Office of Martin Lax and Martin Lax for Defendants and Appellants.

Oliver, Vose, Sandifer, Murphy & Lee and James Duff Murphy for Plaintiff and  
Respondent.

## INTRODUCTION

In this quick take eminent domain proceeding, defendants and appellants<sup>1</sup> appeal from a judgment in favor of respondent, Cathedral City Redevelopment Agency (CCRA), condemning appellants' three residential rental properties for redevelopment purposes. We affirm the judgment.

In quick take eminent domain proceedings, the date of valuation of the property, for purposes of trial on the issue of the property owner's just compensation, is statutorily required to be no later than the date the plaintiff makes a deposit of probable compensation. (Code of Civ. Proc., § 1263.110.)<sup>2</sup> Here, CCRA deposited \$287,000 on December 16, 2002, and on January 20, 2004, deposited an additional \$30,500, a total deposit of \$317,500. The additional \$30,500 was deposited pursuant to the parties' stipulation and the trial court's order, following a hearing on appellants' motion to increase the deposit. (§ 1255.030.) Appellants later filed a motion in limine to set the date of valuation on the date of trial. The trial court denied the motion, and set the date of valuation on December 20, 2002, the approximate date of the original deposit. (§ 1255.110.) At trial on the compensation issue, which commenced on April 28, 2004, a

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<sup>1</sup> Appellants are Sam Stickles and Vikki Stickles, individually and as trustees of the Stickles Family Trust dated March 15, 1984.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

jury determined that the fair market value of the properties was \$384,360 on December 20, 2002.

Appellants contend that the trial court committed reversible error in setting the date of valuation on December 20, 2002. They first argue that the date-of-deposit valuation rule of section 1263.110 did not apply because: (1) CCRA did not, by its own admission, deposit the “full” amount of appellants’ probable compensation on or before December 20, 2002; (2) the \$287,000 deposit was made in “bad faith” because it was based on a then 13-month-old, November 20, 2001, appraisal; and (3) CCRA failed to timely increase the deposit by the additional \$30,500 within 30 days of the trial court’s order requiring the additional deposit. (§§ 1263.110, subd. (b) & 1255.030, subd. (c).) Accordingly, appellants contend that their properties should have been valued on April 28, 2004, pursuant to the date-of-trial valuation rule of section 1263.130.

In the alternative, appellants contend that section 1263.110 was unconstitutionally applied to them because their properties substantially increased in value between the date of the original deposit and the commencement of trial on the compensation issue. Appellants rely on *Saratoga Fire Protection Dist. v. Hackett* (2002) 97 Cal.App.4th 895 (*Saratoga*), which followed the settled rule that statutory requirements in eminent domain proceedings must be disregarded where necessary to ensure that the property owner receives just compensation at the time of the taking.<sup>3</sup>

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<sup>3</sup> *Saratoga* involved a straight condemnation proceeding, that is, a proceeding in which no deposit of probable compensation was made. Accordingly, the date-of-deposit  
[footnote continued on next page]

Based on *Saratoga*, appellants argue that the trial court should have set the date of valuation on the date of trial or, alternatively, should have allowed them to present evidence to the jury of the fair market value of their properties at the time of trial and allowed the jury to decide whether they were entitled to the fair market value of their properties at the time of trial. More broadly, appellants maintain that their constitutional right to just compensation at the time of the taking required the trial court ““to adopt working rules in order to do substantial justice in eminent domain proceedings.””

(*Saratoga, supra*, 97 Cal.App.4th at p. 906.)<sup>4</sup>

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*[footnote continued from previous page]*

valuation rule of section 1263.110 did not apply in *Saratoga*. Instead, the statutory date of valuation was the date the proceedings commenced (§ 1263.120), because trial on the compensation issue in *Saratoga* commenced within one year of the date the proceedings commenced, specifically, 11 months later. The trial court in *Saratoga* set the date of valuation on the date the proceedings commenced, as section 1263.120 required. The appellate court in *Saratoga* reversed, holding that the property owner should have been allowed to present evidence to the trier of fact that the fair market value of its property had substantially increased, from \$2 million to \$3.2 million, during the 11-month period before trial on the compensation issue commenced. The appellate court relied on the settled principle that statutory requirements in eminent domain proceedings must be disregarded where necessary to ensure just compensation to the property owner at the time of the taking. (*Saratoga, supra*, 97 Cal.App.4th at pp. 898, 903-906.)

<sup>4</sup> The issues presented in this case are of first impression and are substantially similar to the issues presented in two cases currently under review in the California Supreme Court, namely, *Mt. San Jacinto Community College Dist. v. Superior Court* (2005) 126 Cal.App.4th 619, review granted May 18, 2005, S132251 (*Mt. San Jacinto*) and *San Diego Metropolitan Transit Development Bd. v. RV Communities* (2005) 127 Cal.App.4th 1201, review granted July 20, 2005, S133786 (*San Diego Metropolitan*).

In *Mt. San Jacinto*, this court held that valuing property on the date a deposit of probable compensation is made generally ensures that the property owner will receive just compensation at the time its property is taken, that is, on the date of the deposit. We rejected the property owner’s argument that it was entitled to a date-of-trial valuation

*[footnote continued on next page]*

We conclude that the trial court did not abuse its discretion in setting the date of valuation on December 20, 2002, for purposes of the trial on the compensation issue, and that section 1263.110 was not unconstitutionally applied to appellants. First, substantial evidence supports the trial court's implicit determination that CCRA complied with the requirements of section 1263.110. Additionally, the initial deposit of \$287,000 was not substantially less than the \$317,500 amount that CCRA later admitted and the trial court implicitly determined was the fair market value of appellant's properties on December 20, 2002. Thus, setting the date of valuation on December 20, 2002, ensured that appellants received just compensation.

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*[footnote continued from previous page]*

date (§ 1255.130) simply because its property substantially increased in value between the date of the deposit and the date of trial on the compensation issue. We reasoned that the property owner had the option of withdrawing the amount of the deposit, that is, the approximate fair market value of its property on the date of the deposit, shortly after the deposit was made and investing the funds in comparable property or other investments. We distinguished *Saratoga* on the ground that it involved a straight condemnation proceeding in which no deposit of probable compensation was made.

In *San Diego Metropolitan*, Division One of this court held that the trial court did not err in setting the date of valuation on the date of trial (§ 1255.130), even though a deposit of probable compensation had been made. Notably, the plaintiff in *San Diego Metropolitan* deposited only \$79,357, an amount substantially less than the \$300,300 sum it later admitted was the fair market value of the property on the date of the deposit. Following the defendant's motion to increase the deposit, the plaintiff voluntarily deposited an additional \$200,643. The court in *San Diego Metropolitan* rejected the plaintiff's argument that the defendant's sole remedy was to seek an increase in the deposit under section 1255.030, noting that the "delayed increase of the deposit . . . with no change in the date of valuation would not have satisfied the constitutional requirement of just compensation because the amount of the increased deposit would have been insufficient to buy comparable other property in the current market." (*San Diego Metropolitan, supra*, 127 Cal.App.4th at p. 1221.)

Appellants further contend that the trial testimony of CCRA’s expert appraiser, Michael Champion, should have been excluded because he relied on an incorrect definition of fair market value. (§ 1263.320.) We reject this contention without considering its merits, because appellants have failed to designate any portion of Champion’s trial testimony or any portion of the trial transcript, for that matter, as part of the record on this appeal. (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.)

## DISCUSSION

### A. *The Quick-Take Statutory Scheme*

Under the Eminent Domain Law (§ 1255.010 et seq.), the fair market value of the property on the “date of valuation” is the amount of compensation that must be awarded for the property. (§§ 1263.310 & 1263.320.)<sup>5</sup> The statutes provide for three alternative dates of valuation: (1) the date of the commencement of the proceedings if trial on the compensation issue commences within one year of the date the proceedings commence (§ 1263.120);<sup>6</sup> (2) the date a deposit of “probable compensation” is made (§ 1263.110,

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<sup>5</sup> Section 1263.320, subdivision (a), defines “fair market value” as “the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.”

<sup>6</sup> Section 1263.120 provides: “If the issue of compensation is brought to trial within one year after commencement of the proceeding, the date of valuation is the date of commencement of the proceeding.”

subd. (a));<sup>7</sup> and (3) the date of commencement of trial on the compensation issue if trial does not commence within one year of the date the proceedings commence and the delay is not caused by the defendant (§ 1263.130).<sup>8</sup>

The date-of-deposit valuation rule of section 1263.110 applies only in “quick take” or “early possession” eminent domain proceedings. (See *Redevelopment Agency v. Gilmore* (1985) 38 Cal.3d 790, 794, 800-801 (*Gilmore*)). In these proceedings, the plaintiff makes a deposit of the probable amount of compensation that the defendant will be awarded in the proceeding. (§ 1255.010 et seq.) In consideration for the deposit, the plaintiff is entitled to seek an order for prejudgment possession of the property pending a jury trial on the compensation issue. (§ 1255.410 et seq.) Regardless of whether the

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<sup>7</sup> Section 1263.110, subdivision (a), provides: “Unless an earlier date of valuation is applicable under this article, if the plaintiff deposits the probable compensation in accordance with [statutory procedures commencing with section 1255.010] . . . the date of valuation is the date on which the deposit is made.” An earlier date of valuation applies if trial on the compensation issue commenced within one year. (§ 1263.120.) Thus, where a deposit of probable compensation has been made, the date of valuation is *no later* than the date of the deposit; it cannot be the date of trial. (Legis. Com. com., Deering’s Ann. Code Civ. Proc. (1981 ed.) foll. § 1263.110, p. 250.)

<sup>8</sup> Section 1263.130 provides: “Subject to Section 1263.110, if the issue of compensation is not brought to trial within one year after commencement of the proceeding, the date of valuation is the date of the commencement of the trial unless the delay is caused by the defendant, in which case the date of valuation is the date of commencement of the proceeding.” Thus, if trial on the compensation issue does not commence within one year, the date of valuation is the date of commencement of trial, unless either: (1) the defendant causes the delay in trial; or (2) the plaintiff made a deposit of probable compensation. (§ 1263.110 et seq.)

plaintiff seeks an order for early possession, the date of valuation is statutorily required to be *no later* than the date of the deposit. (§ 1263.110 et seq.; fn. 7, *ante*.)

Shortly after the deposit is made, the defendant may withdraw all or any portion of the deposit, subject to the claims of other persons having interests in the property (§ 1255.210 et seq.), and may invest the deposit in comparable real properties or other investments. If any portion of the deposit is withdrawn, the defendant waives its right to contest the plaintiff's right to take the property. (§ 1255.260.)

Regardless of whether the defendant withdraws all or any portion of the deposit, the defendant has a right to a jury trial on the amount of just compensation. (*Emeryville Redevelopment Agency v. Harcros Pigments, Inc.* (2002) 101 Cal.App.4th 1083, 1116; Cal. Const., art. I, § 19;<sup>9</sup> *People v. Ricciardi* (1943) 23 Cal.2d 390, 402.) “All other questions of fact, or mixed fact and law, are to be tried . . . without reference to a jury.” (*Id.* at p. 402.) The questions to be tried before the court include, without limitation, whether the amount of the deposit equals the *probable amount* of the defendant's just compensation. (§ 1255.030.)

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<sup>9</sup> Article I, section 19 of the California Constitution provides: “Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the *probable amount* of just compensation.” (Italics added.)

The quick-take statutory scheme includes procedures that are designed to ensure that the deposit equals the *probable amount* of compensation the defendant will be awarded at trial on the compensation issue. The deposit must be based on an appraisal, and the plaintiff must give notice of the deposit with a written statement or summary of the basis for the appraisal. (§§ 1255.010<sup>10</sup> & 1255.020.) After the deposit is made, the plaintiff or any party having an interest in the property may move the trial court to “determine or redetermine whether the amount deposited is the probable amount of compensation that will be awarded in the proceeding.” (§ 1255.030, subd. (a).) The motion must be supported “with detail sufficient to indicate clearly the basis for the motion,” including the same type of information provided by the plaintiff in its written statement or summary supporting the deposit. (*Ibid.*; § 1255.060, subd. (b).)<sup>11</sup>

If the trial court determines that the deposit is less than the probable amount of the defendant’s compensation, the plaintiff must increase the deposit accordingly “within 30 days from the date of the court’s order, or any longer time as the court may have allowed at the time of making the order.” (§ 1255.030, subd. (c).) If the plaintiff does not

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<sup>10</sup> The written statement or summary of the appraisal must include, at a minimum: (1) the date of valuation, highest and best use, and applicable zoning of the property; and (2) the principal transactions, cost analysis, and income analysis supporting the appraisal. (§ 1255.010, subd. (b).)

<sup>11</sup> The amount deposited or withdrawn may not be given in evidence or referred to at trial on the issue of compensation, and neither parties’ appraisal, written statement, or other statements made in connection with a deposit or withdrawal may be considered an admission of any party. (§ 1255.060.)

increase the deposit within the time allowed, then “no deposit shall be deemed to have been made” for purposes of section 1263.110 and the date-of-deposit valuation rule will not apply. (§ 1263.110, subd. (b).)<sup>12</sup> In this event, the property will be valued on the date the proceedings commenced or on the date trial commences on the compensation issue, depending upon whether trial on the compensation issue commences within one year of the date the proceedings commenced and depending further upon whether the delay was caused by the defendant. (§§ 1263.120 & 1263.130.)

*B. The Overriding Principle of Just Compensation*

Notwithstanding the eminent domain statutes, it is settled that the defendant has a constitutional right to just compensation, which “cannot be made to depend upon state statutory provisions.” (*Gilmore, supra*, 38 Cal.3d at p. 797.) “[A]ll condemnation law, procedure and practice[—]is but a means to the constitutional end of just compensation to the involuntary seller, the property owner.’ [Citation.]” (*People ex rel. Dept. of Transportation v. Southern Cal. Edison Co.* (2000) 22 Cal.4th 791, 800.) “No one can gainsay that the amount to be paid for property taken by the government is, under the Constitution, a matter for the courts rather than the Legislature . . . . [Citations.]” (*County of Los Angeles v. Ortiz* (1971) 6 Cal.3d 141, 145.) Just compensation is the

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<sup>12</sup> The defendant may also elect to treat the plaintiff’s failure to make an additional deposit as an abandonment of the proceeding. If the plaintiff does not cure its failure to make the additional deposit within 10 days of receiving notice of the defendant’s election, then “the court shall, upon motion of the defendant, enter judgment dismissing the proceeding . . . .” (§ 1255.030, subd. (c).)

overriding principle that applies in all condemnation proceedings. (*Mt. San Jacinto Community College Dist. v. Superior Court* (2004) 117 Cal.App.4th 98, 105.)

Affording just compensation to property owners means that they must receive the fair market value of the property *at the time of the taking*, that is, at the time the government tenders payment and takes possession -- notwithstanding contrary practices or procedures. (*Kirby Forest Indus., Inc. v. United States* (1984) 467 U.S. 1, 17-18 [104 S.Ct. 2187, 81 L.Ed.2d 1] (*Kirby*)). In *Kirby*, the high court held that the defendant was entitled to the fair market value of its property at the time the government tendered payment -- notwithstanding a practice of valuing property at the time of trial. The defendant's property was valued at the time trial commenced in March 1979, but the government did not tender payment of the award until March 1982. (*Id.* at pp. 7-8.) The defendant argued that its property had substantially increased in value during the two-year period and it was therefore constitutionally entitled to the fair market value of its property in March 1982, the time of the taking and tender of payment.

The *Kirby* court agreed, stating: "However reasonable it may be to designate the date of trial as the date of valuation, if the result of that approach is to provide the owner substantially less than the fair market value of his property *on the date the United States tenders payment*, it violates the Fifth Amendment." (*Kirby, supra*, 467 U.S. at pp. 17-18, italics added.) The *Kirby* court rejected the government's argument that the defendant's remedy was to be awarded interest on the award from the date of valuation or trial to the date of the taking or payment, as "a rough proxy for the increase in the value of the land during that period," reasoning that the "[c]hange in the market value of particular tracts

of land over time bears only a tenuous relationship to the market rate of interest.” (*Id.* at p. 17.)

The court in *Saratoga* followed the long-standing judicial practice of disregarding eminent domain statutes where necessary to ensure the property owner’s constitutional right to receive just compensation at the time of the taking. (*Saratoga, supra*, 97 Cal.App.4th at pp. 905-906.) In *Saratoga*, section 1263.120 required that the property be valued on the date the proceedings commenced, but the court ruled that the defendant should have been allowed to present “evidence of unusual circumstances which, if believed by the trier of fact, would make it unjust to apply section 1263.120 . . . .” (*Saratoga, supra*, at pp. 898, 905-906.) Notwithstanding section 1263.120, evidence that the property had substantially increased in value by the time of trial, if believed by the trier of fact, warranted setting the valuation date on the date of trial in *Saratoga*. (*Saratoga, supra*, at p. 906.)<sup>13</sup>

*Saratoga* involved a straight condemnation proceeding with no deposit of probable compensation. (See *Saratoga, supra*, 97 Cal.App.4th at p. 898.) The defendant in *Saratoga* was therefore not entitled to receive *any* compensation for his property until it

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<sup>13</sup> We interpret *Saratoga* as holding that the trial court, not the jury, was to determine whether it was unjust or unconstitutional to apply section 1263.120 to the defendant. (*Saratoga, supra*, 97 Cal.App.4th at pp. 905-906.) As we have noted, in eminent domain proceedings only the *amount* of just compensation is to be tried by a jury. All other questions of law and fact are to be tried by the court. (*Emeryville Redevelopment Agency v. Harcros Pigments, Inc., supra*, 101 Cal.App.4th at p. 1116, and cases cited.)

was taken, that is, until after trial and judgment on the compensation issue. (§ 1268.010, et seq.) The holding in *Saratoga* thus ensured that the property owner would receive the fair market value of his property at or near the time it was taken. Similarly, the holding in *Kirby* ensured that the defendant would receive the fair market value of its property at the time it was finally taken, that is, when the government tendered payment and took possession. (*Kirby, supra*, 467 U.S. 1, 17-18.)

### C. *Just Compensation in Quick-Take Proceedings*

In straight condemnation proceedings, the defendant stays in possession of the property, retains title to the property, and bears all risk of loss to the property pending trial and judgment on the compensation issue. (§ 1268.030, subd. (c); *Redevelopment Agency v. Maxwell* (1961) 193 Cal.App.2d 414, 418.) And in straight condemnation proceedings, a taking is deemed to occur at the time of trial and judgment, or when the government finally tenders payment and takes title and possession. (*Kirby, supra*, 467 U.S. 1, 17-18; §§ 1268.010-1268.030.) But in quick-take proceedings, a taking occurs before trial and judgment on the compensation issue. Specifically, a taking occurs in quick-take proceedings when the deposit of probable compensation is made and the plaintiff obtains prejudgment possession. (*Gilmore, supra*, 38 Cal.3d at pp. 800-801.)

The quick-take statutory scheme contains procedural safeguards that are designed to ensure that defendant receives the *probable amount* of its just compensation no later than the time of the taking. Although the deposit of the probable amount of compensation will not always equal the amount a jury later determines to be the fair market value, it is nonetheless based on expert opinion and defendant is entitled to

interest on the disparity between the amount of the deposit and the amount ultimately awarded by the jury. (§ 1268.310, subd. (b); *Gilmore, supra*, 38 Cal.3d at p. 801.)

There are sound reasons for setting the date of valuation no later than the date of the deposit in quick-take proceedings. Where the amount of the deposit equals the fair market value of the property on the date of the deposit, the plaintiff will have tendered the undisputed probable amount of compensation before the taking. Concomitantly, the defendant will have had the option of investing the probable amount of its compensation in other real property or alternative investments before the taking. In this event, it is fair to both the plaintiff and the defendant to value the property no later than the date of the deposit. (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 715 [compensation for taking or damage to property must be just to public as well as to property owner].)

Indeed, where the deposit equals the undisputed fair market value of the property on the date of the deposit, it is unfair to the plaintiff to shift the date of valuation forward to the date of trial, particularly in a rising real estate market. Setting the date of valuation on the date of trial, solely because the fair market value of the property increased between the date of the deposit and the date of trial, is akin to allowing a seller to recoup the increased value of its property several months or years following the sale. In these circumstances, setting the date of valuation on the date of the deposit, as section 1268.110 requires, will ensure that the defendant receives just compensation even if the jury awards an amount greater than the deposit.

In ruling on a section 1255.030 motion, the court is concerned with whether the amount of the deposit equals the probable amount of compensation that will be awarded in the proceeding. In many cases, the fair market value of the property on the date of the deposit (or earlier valuation date) will be a matter of substantial dispute. In making its fair market value determination, the court may have to choose between competing but equally well-supported appraisals and substantially different valuation criteria. In other cases, the fair market value of the property will not be reasonably or substantially disputed.

Complications arise where the amount of the deposit is *substantially* less than the fair market value of the property on the date of the deposit. In these cases, the equities of the case and, more generally, the principle of just compensation may require that section 1268.110 be disregarded, and that a different date of valuation be set for purposes of trial on the compensation issue. For when the deposit of probable compensation is substantially less than the fair market value of the property taken, the defendant has been deprived of his ability of investing the deposit in other property of equal value. Thus, he has been deprived of just compensation.

In determining the date of valuation for purposes of trial on the compensation issue, the court may have to weigh competing equitable considerations. For example, if the court previously determined that the plaintiff's initial deposit was substantially deficient, then the defendant will not have received the benefit of a full deposit of its probable compensation, at least initially. This factor will weigh in favor of setting the valuation on the date of the increased deposit, if not on the date of trial. But if the

plaintiff's initial deposit was made in good faith based on a well-supported appraisal, and the determination of fair market value was reasonably disputed, then it may be unfair to the plaintiff to shift the date of valuation forward to the date of trial or even to the date of the increased deposit, particularly in a rising real estate market.

In a given case, the determination of whether the statutory date of valuation must be disregarded in favor of a different valuation date may be as complex as the equities of the case permit. With these considerations in mind, we turn to the facts of this case.

#### *D. Facts and Procedural History*

On December 16, 2002, 10 days after filing and serving a summons and complaint in eminent domain seeking to condemn appellants' properties, CCRA deposited \$287,000 as the probable amount of appellants' just compensation. (§ 1255.010 et seq.) On December 24, the trial court issued an order for prejudgment possession. Shortly thereafter, CCRA took possession of the property.

In April 2003, appellants filed a motion to increase the amount of the deposit (§ 1255.030), but took the motion off calendar after CCRA filed an opposition.<sup>14</sup> In July 2003, a jury trial was set for April 19, 2004.

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<sup>14</sup> In their April 2003 motion, appellants argued that the deposit should be increased because it did not reflect the *current* fair market value of the properties. They submitted that the properties were worth between \$390,00 and \$400,000 on January 30, 2003, and that the deposit should have increased by a minimum of \$103,000. In opposition, CCRA argued that appellants' appraisal did not meet the requirements of section 1255.030.

In October 2003, appellants filed a second motion to increase the amount of the deposit. This motion was substantially identical to appellants' first motion. Appellants argued that the \$287,000 deposit was "inadequate," because it was based on a November 20, 2001, evaluation, made more than one year before the complaint was filed. However, appellants did not present any evidence that the value of the properties was greater than \$287,000 on December 16, 2002, the date of the deposit. Instead, they argued that the amount of the deposit should be based on the *current* fair market value of the properties, specifically, \$450,000 as of September 17, 2003. They submitted an appraisal showing that the value of the properties was \$450,000 as of September 3, 2003, and requested that the deposit be increased "by a minimum" of \$163,000.

In opposition to appellants' motion, CCRA argued that the proper valuation date was December 16, 2002 (§ 1263.110), and attacked appellants' September 17, 2003, appraisal as not meeting the requirements of section 1255.030, subdivision (a). In their reply papers, appellants argued that the proper valuation date was the date of the commencement of trial, because the compensation issue would not be brought to trial within one year (§ 1263.130), and defended their appraisal as meeting the requirements of section 1255.030. In a supplemental opposition, CCRA submitted "updated appraisals" showing that the fair market value of the properties was \$317,500, as of December 16, 2002. CCRA stated: "The fair market value of the [properties] . . . as of December 16, 2002 is \$317,500.00."

At an October 30, 2003, hearing on the motion and following argument but before the court ruled on the motion, CCRA offered to increase the amount of the deposit by

\$30,000, to \$317,000. Appellants' counsel said, "We'll take it." Appellants' counsel said he would prepare an order, and the hearing concluded.

On November 13, 2003, appellants served on CCRA a proposed order on the stipulation to increase the amount of the deposit by \$30,000. The order did not include signature lines for CCRA, appellants, or their respective counsel. The order was signed by the court and filed on November 25,<sup>15</sup> but appellants did not serve a file-stamped, signed copy of the order on CCRA until January 15, 2004.<sup>16</sup>

On January 15, 2004, appellants served on CCRA a filed-stamped, signed copy of the November 25 order, together with a "Notice of Election to Treat Plaintiff's Failure to Increase Deposit Pursuant to Court Order as an Abandonment of the Proceeding." On the same day, CCRA served a "Notice of Additional Deposit," advising appellants that they

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<sup>15</sup> On November 10, 2003, appellants filed and served on CCRA and other persons interested in the property a verified application to withdraw the \$287,000 sum, together with a proposed order directing the clerk of court to withdraw and pay the \$287,000 sum to appellants. (§ 1255.210.) This order was signed and filed on November 13. On November 18, CCRA served on appellants and other interested persons an objection to appellants' application, on the ground that other parties were known or believed to have an interest in the properties, and on the further ground that real property taxes were believed to be owed on the properties and a proration of taxes would have to be made as of the effective date of the order for immediate possession. (§ 1255.230.) Also on November 18, CCRA served a notice of appellants' application for withdrawal, advising the interested persons that they had a right to appear and object to the withdrawal within 10 days after service of the notice, and that the failure to object would result in a waiver of any rights they had against CCRA to the extent of the amount withdrawn. (*Ibid.*) CCRA's notice and objection were filed on November 25.

<sup>16</sup> On December 9, 2003, appellants substituted new attorneys in place of their former counsel. A substitution of attorney was filed on December 17.

had deposited an additional \$30,500 with the clerk of court. On January 23, CCRA filed a second “Notice of Additional Deposit,” advising appellants that the \$30,500 sum had been deposited on January 20.

On March 1, 2004, appellants filed another motion to increase the deposit. (§ 1255.030.) In that motion, appellants argued that the valuation date should be set on the date of trial, because CCRA failed to deposit the additional \$30,000 sum within the time allowed under section 1255.030, that is, within 30 days of the trial court’s order. (§ 1263.110, subd. (b).) They further argued, as they had in their previous motion, that the date-of-trial valuation rule (§ 1263.130) applied because trial on the compensation issue would not commence until more than one year after the proceedings commenced, and that CCRA’s original \$287,000 deposit was inadequate, because it was based on a November 20, 2001, appraisal. Appellants again presented no evidence of the value of the property on December 20, 2002. (§ 1255.030.) Instead, they claimed that the *current* fair market value of the properties was \$603,500, and requested that the deposit be increased from \$317,500 to \$603,500, an additional \$286,000.<sup>17</sup>

CCRA opposed appellants’ March 2004 motion on the ground that appellants had not served a signed, file-stamped copy of the November 25, 2003, order increasing the deposit until January 15, 2004, when it was attached to appellants’ “Notice of Election to

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<sup>17</sup> On March 9, 2004, appellants filed a verified application to withdraw \$30,000 of the additional \$30,500 sum deposited on January 20, 2004. The trial court signed an order authorizing the withdrawal on March 15.

Treat Plaintiff’s Failure to Increase Deposit Pursuant to Court Order as an Abandonment of the Proceeding.” Thus, CCRA argued that appellants’ counsel never complied with section 1019.5,<sup>18</sup> and the 30-day time period for making the additional deposit, which runs from the date of the court’s order (§ 1255.030), did not begin to run until January 15. Accordingly, CCRA argued that the date of valuation was the date of deposit, because the statutory scheme, specifically, sections 1255.010, 1255.030, and 1263.110, “clearly contemplate[] increases to the amount on deposit without affecting the date of value,” unless the plaintiff fails to deposit the additional sum within 30 days of the court’s order. (Underlining omitted.)

In reply, appellants argued that CCRA was obligated to deposit the \$30,000 sum within 30 days of October 30, 2003, because CCRA stipulated to increase the deposit on that date and no further notice was necessary. For this reason, and because trial on the compensation issue was not scheduled to commence within one year of commencement of the proceeding (§ 1263.130), appellants argued that the valuation date should be shifted forward to the date of trial. For the first time in their reply papers, appellants cited *Saratoga, supra*, 97 Cal.App.4th at page 906, and argued that the trial court had

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<sup>18</sup> Section 1019.5, subdivision (a), provides: “When a motion is granted or denied, unless the court otherwise orders, notice of the court’s decision or order shall be given by the prevailing party to all other parties or their attorneys, in the manner provided in this chapter, unless notice is waived by all parties in open court and is entered in the minutes.”

discretion to shift the valuation date to the date of trial, because appellants' properties had substantially increased in value since the date the proceedings commenced.

Appellants also argued, for the first time in their reply papers, that CCRA's original deposit of \$287,000 was not made in good faith, because it was based on an outdated, 13-month-old November 20, 2001, appraisal. They also charged that CCRA's October 28, 2003, "updated appraisals" which valued the properties at \$317,500 as of December 16, 2002, were "dramatically flawed" because they were not based on "the appropriate definition of fair market value." (§ 1263.320.)

The trial court denied appellants' March 2004 motion to increase the deposit, following a hearing on March 25, 2004. At the hearing, appellants' counsel told the court that it would be "fine" if the court wanted to reserve, until the date of trial, deciding whether the date of valuation should be the date of trial.

On April 19, 2004, shortly before trial commenced on the compensation issue, appellants filed a motion in limine (the *Saratoga* motion) to allow it to present evidence to the jury that the value of the properties had substantially increased since December 2002, and to allow the jury to award them just compensation based on the value of the properties at the time of trial. CCRA opposed the motion, on the ground that *Saratoga* did not apply to quick-take proceedings. The trial court agreed with CCRA, denied appellants' *Saratoga* motion, and set the valuation date on December 20, 2002, the date the trial court signed an order permitting deposit. (§ 1263.110.)

A jury trial on the issue of appellants' just compensation commenced on April 28, 2004. The parties were only allowed to present evidence of the value of the properties on

December 20, 2002. CCRA presented evidence that the fair market value of the properties was \$317,500, and appellants presented evidence that the fair market value of the properties was \$490,000. The jury determined that the fair market value of the properties was \$384,360 on December 20, 2002.

*E. The Trial Court Did Not Abuse Its Discretion in Setting the Date of Valuation on the Date of the Deposit, and the Date-of-Deposit Valuation Rule of Section 1263.110 is Not Unconstitutional as Applied to Appellants*

Appellants contend that the trial court erroneously denied their *Saratoga* motion to set the date of valuation on the date of trial. They first argue that the date-of-deposit valuation rule of section 1263.110 did not apply because CCRA failed to meet its requirements. Specifically, they argue that: (1) CCRA, by its own admission, failed to deposit the probable amount of appellants' compensation on December 20, 2002; (2) the original deposit of \$287,000 was not made in good faith because it was based on a 13-month-old appraisal dated November 20, 2001; and (3) CCRA failed to deposit the additional \$30,000 sum within 30 days of the trial court's October 30, 2003, order. (§§ 1255.030, subd. (c) & 1263.110, subd. (b).)

Alternatively, appellants argue that section 1263.110 is unconstitutional as applied to them, because their properties substantially increased in value between December 20, 2002, the date of the original \$287,000 deposit, and April 28, 2004, the date trial commenced on the compensation issue. They maintain that the trial court should have either set the date of valuation on the date of trial or allowed them to present evidence to the jury concerning the increase in the value of their properties and allowed the jury the

option of awarding them the value of their properties at the time of trial. (*Saratoga, supra*, 97 Cal.App.4th at pp. 905-906.) We reject each of appellants' contentions.

Section 1263.110 clearly contemplates that the property may still be valued on the date of the deposit *even if* the court subsequently determines under section 1255.030 that the deposit is less than the defendant's probable compensation, *provided* that the plaintiff timely deposits the additional funds. But the question presented here is not only whether the requirements of section 1263.110 were met, but whether section 1263.110 is unconstitutional as applied to appellants, that is, whether its application denied appellants just compensation at the time of the taking.

Based on the particular facts of this case, the trial court did not abuse its discretion in denying appellants' motions to set the date of valuation on the date of trial, and section 1263.110 is not unconstitutional as applied to appellants. First, although CCRA did not deposit what it later admitted was the "full" amount of appellants' probable compensation on December 20, 2002, CCRA complied with the requirements of section 1263.110. Its original \$287,000 deposit was supported by a November 20, 2001, appraisal and was made in accordance with the statutory procedures. (§ 1255.010 et seq.) Further, CCRA timely deposited the \$30,500 sum within 30 days of appellants' service of the trial court's order on the parties' October 30, 2003, stipulation. (§ 1019.5.)

There is no evidence that CCRA's initial deposit of \$287,000 was not made in good faith. Although CCRA's November 20, 2001, property evaluation was 13 months old at the time of the initial deposit, there was no showing that the \$287,000 initial deposit was not a reasonable estimate of the fair market value of the properties on

December 20, 2002. To the contrary, it constituted 90 percent of the \$317,500 amount that CCRA later admitted was the fair market value of the properties on December 20, 2002, based on CCRA's subsequently "updated appraisals."

Moreover, appellants did not pursue a section 1255.030 motion to determine the probable amount of their compensation and increase the deposit until October 2003, nearly one year after the \$287,000 deposit was made. And even then, appellants did not present any evidence that the value of the properties was greater than \$287,000 on December 20, 2002. Instead, appellants argued that the deposit should be based on the then-current fair market value of the properties, or \$450,000 as of September 3, 2003. Nor did appellants present any evidence of the date-of-deposit value of the properties in their March 2004 section 1255.030 motion. Instead, they again requested that the deposit be increased to the then-current fair market value of the properties, or \$603,500.

In response to appellants' October 2003 section 1255.030 motion, CCRA offered to increase the deposit by \$30,000, based on CCRA's "updated appraisals" valuing the properties on December 20, 2002. Had CCRA not done so, there would have been no basis for the trial court to order the deposit increased by \$30,000 or any other amount. It is also significant that appellants did not apply to withdraw the \$287,000 deposit until November 2003, and that by January 2004, the full \$317,500 amount that they later complained was not initially deposited was on deposit and available for their withdrawal.

Finally, appellants' reliance on *Saratoga* is misplaced, because *Saratoga* involved a straight condemnation proceeding where no deposit of probable compensation was made. It is of critical importance that the defendant in *Saratoga* was not entitled to *any*

compensation for his property until after trial and judgment on the compensation issue, 11 months after the proceedings commenced. Accordingly, just compensation to the defendant *at the time his property was taken* required that the property be valued at the time of trial, notwithstanding section 1263.120. (*Saratoga, supra*, 97 Cal.App.4th at pp. 905-906.)

Here, however, appellants had \$287,000 at their disposal in December 2002 (90 percent of the amount determined as probable compensation). The \$30,500 balance of appellants' probable compensation was available for their withdrawal by January 2004, shortly after appellants finally pursued a motion to increase the deposit and served CCRA with a signed, file-stamped copy of the order on the parties' stipulation to increase the deposit. Unlike the defendant in *Saratoga*, appellants were not required to wait until after trial and judgment to receive any compensation. Instead, substantially all of appellants' probable compensation was at their disposal shortly after the initial good faith deposit was made, and the rest was available for their withdrawal shortly after they finally sought to increase the initial deposit.

““The just compensation required by the Constitution to be made to the owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public.”” (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp., supra*, 16 Cal.4th at p. 715, quoting *Bauman v. Ross* (1897) 167 U.S. 548, 574 [17 S.Ct. 966, 42 L.Ed. 270].)

DISPOSITION

The judgment is affirmed. CCRA shall recover its costs on appeal.

CERTIFIED FOR PUBLICATION

/s/ King  
J.

We concur:

/s/ McKinster  
Acting P.J.

/s/ Gaut  
J.