

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT

In the Matter of	:	New York County
	:	Index No. 104597/2007
	:	
DEVELOP DON'T DESTROY BROOKLYN, INC., et al.	:	REPLY AFFIRMATION
	:	OF PHILIP E.
Petitioners-Plaintiffs-Appellants	:	KARMEL IN SUPPORT
	:	OF THE CROSS-
For a Judgment Pursuant to Article 78 of the CPLR and	:	MOTION FOR A
Declaratory Judgment	:	BRIEFING SCHEDULE
	:	AND PREFERENCE
	:	
- against -	:	
	:	
URBAN DEVELOPMENT CORPORATION d/b/a	:	
EMPIRE STATE DEVELOPMENT CORPORATION,	:	
et al.	:	
	:	
Respondents-Defendants-Respondents.	:	

PHILIP E. KARMEL, an attorney admitted to the practice of law in the State of New York, hereby affirms and declares under the penalty of perjury:

1. I am a member of Bryan Cave LLP, which, together with Sive, Paget & Riesel, P.C., represents respondent-defendant-respondent New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”) in this proceeding. I am fully familiar with all the proceedings heretofore had herein and the facts hereinafter recited and respectfully submit this reply affirmation in support of ESDC’s cross-motion for an expedited briefing schedule and preference.¹

2. “Preferences in the hearing of an appeal may be granted in the discretion of the court to which the appeal is taken.” CPLR § 5521(a). An expedited

¹ ESDC strongly disagrees with appellants’ assertions in their counsel’s reply affirmation dated January 31, 2008 in support of their application for a preliminary injunction, but these assertions will not be addressed here in light of the prohibition on sur-reply papers. This affirmation is a reply with respect to ESDC’s cross-motion only.

briefing schedule and preference have been requested by ESDC and the two other governmental agencies that have been sued in this proceeding because the expeditious resolution of the appeal would be in the public interest.

3. This proceeding seeks to challenge the determinations of three governmental bodies to approve the Atlantic Yards Land Use Improvement and Civic Project (the "Project"), a multi-faceted development with important public benefits and purposes. The public benefits and purposes were described in detail in the ESDC decision-making documents cited in my initial affirmation. These benefits and purposes have now been recognized by the U.S. Court of Appeals for the Second Circuit, which recently rejected the contention that ESDC's exercise of the power of eminent domain with respect to the Project was not for a public use. *See Goldstein v. Pataki*, No. 07-2537-CV (2nd Cir. Feb. 1, 2008) (annexed hereto as Exh. A).

4. The instant proceeding does not seek money damages or other relief that is particular to the appellants or certain aspects of the Project. It seeks to challenge the legality of the Project's approvals *in toto*. The mere pendency of such litigation, no matter how lacking in merit, is a potential roadblock to the massive capital investment required to proceed with the Project's critical components. Thus, in his affidavit dated January 18, 2008, appellants' counsel (Jeffrey Baker, Esq.) averred that "FCRC is not in a position to move forward in any significant manner with the project while the appeal is being heard." Baker Aff. ¶ 60.

5. Delay in construction would delay completion of the Project, postponing its significant public benefits. It is thus critically important that the appeal be perfected so as to be argued before this Court's customary summer recess. This is

