

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of

DEVELOP DON'T DESTROY BROOKLYN;
DANIEL GOLDSTEIN;
ATLANTIC AVENUE BETTERMENT ASSOCIATION;
FORT GREENE ASSOCIATION;
BOERUM HILL ASSOCIATION;
FIFTH AVENUE COMMITTEE;
EAST PACIFIC BLOCK ASSOCIATION;
PROSPECT HEIGHTS ACTION COALITION
by its President PATTI HAGAN;
PRATT AREA COMMUNITY COUNCIL;
SOCIETY FOR CLINTON HILL;
DEAN STREET BLOCK ASSOCIATION (4th to 5th Ave.)
by its President JUDY SACKOFF;
PROSPECT HEIGHTS NEIGHBORHOOD
DEVELOPMENT COUNCIL; ELISELLE ANDERSON,
DAVID SHEETS, KEN DIAMONDSTONE; and
PACIFIC CARLTON DEVELOPMENT CORP.,

Index No. 100686/06

Petitioners - Plaintiffs

For a Judgment Pursuant to Article 78 of the CPLR and
Declaratory Judgment

- against -

EMPIRE STATE DEVELOPMENT CORPORATION and
FOREST CITY RATNER COMPANIES,

Respondents - Defendants

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AFFIDAVIT OF LETITIA JAMES

STATE OF NEW YORK)

ss.:

COUNTY OF KINGS)

LETITIA JAMES, being duly sworn, deposes and says:

1. I am a member of the New York City Council, representing District 35, which includes areas of Fort Greene, Clinton Hill, and Prospect Heights in Brooklyn. District 35 includes the footprint of, and is most directly affected by, Forest City Ratner Companies' (FCRC) proposed publicly subsidized, mixed-use redevelopment plan known as the Atlantic Yards Arena and Redevelopment Project.

2. The Project would cover 22 acres of land in my District with a sports arena, a 180-room hotel, and 16 high-rise apartment and office towers, and would replace existing residences and businesses through the use of eminent domain.

3. I respectfully submit this Affidavit in support of my motion to appear as amicus curiae in the petitioners-plaintiffs' motion to preliminarily enjoin the demolition of 12 buildings in my District within the footprint of the Project, pending an independent review of the developer's claims that the buildings are imminently dangerous.

4. Although the Project has not yet been subjected to any of the necessary reviews under the applicable New York State laws, the lead state agency on the Project, the Empire State Development Corporation ("ESDC"), has nevertheless approved FCRC's application to begin demolishing within the Project footprint, based on FCRC's claims that 12 buildings it owns there – some of which FCRC has owned for more than one and one half years – are so structurally unsound that they present an imminent danger to the public.

5. Neither FCRC nor ESDC has permitted me or anyone else to have an independent engineer inspect the buildings, and the same attorney who represented FCRC with respect to the Project also represents ESDC with respect to its approval of FCRC's application to demolish these buildings.

6. I am very concerned that ESDC granted the demolition application without independent review and in the presence of a conflict of interest. The demolition of these buildings before the Project has even been reviewed will give the appearance that the Project is going forward regardless of the outcome of the review process, and will thereby serve to discourage further opposition to the Project from those residents, business and property owners in the footprint who do not wish to move or sell their properties and businesses, as well as from others in my District who oppose the Project.

7. Just as significant, the “rubber-stamping” of the developer’s demolition application by an agency represented by the developer’s own attorney will give the impression that the New York State laws which mandate and govern the review and potential approval of the Project are meaningless, and that the fate of my District and of the people who live, work and own property here has already been determined by ESDC and FCRC.

The Matter of Public Interest at Stake

8. This case involves a matter of important public interest. As a representative of the District most affected by the Project, I have uniquely relevant and immediate concerns. I believe that my participation in this case as amicus curiae would be of special assistance to the Court.

9. The Project would require the closing of City streets, would rely on eminent domain to force residential and commercial property owners to sell their properties for transfer to a private developer, and would thrust a massive real estate development, including 60-story-tall skyscrapers, into the midst of thriving, vibrant and historically low-rise neighborhoods.

10. Many residents within my District believe that the Project would have a substantially

detrimental impact on the community environment and have been exercising their rights to voice opposition to the Project in its current form and to lobby governmental officials to alter or defeat the Project. A number of residents and property owners within the proposed Project's footprint, including some of the petitioners herein, do not wish to sell their homes or properties to FCRC and are adamantly opposed to the State's use of eminent domain to compel them to do so.

11. I have many serious reservations about the process, scope, and scale of the Project. I share the concerns of the individuals and community groups who are petitioners-plaintiffs in this action. But my perspective as a member of the local governing body will bring to the Court's attention arguments that might not otherwise be presented.

12. I am paying particular attention to the Project because it usurps the local political process. ESDC has declared it a "State project" under the Urban Development Corporation Act, giving ESDC the power to review and approve it, overriding both the New York City Uniform Land Use Review Procedures and the New York City Zoning Resolution.

13. Because the Project circumvents local review, I have a special duty as a local representative to monitor its review by ESDC under the State Environmental Quality Review Act ("SEQRA") to ensure that it is an open and deliberative process, as the law requires.

14. Of great concern to me is the authority granted to ESDC to exercise the power of eminent domain to acquire private property which the developer needs for the Project, but does not own or control. As the Court is no doubt aware, the abuse of the power of eminent domain is of growing concern to localities across the country, especially after the U.S. Supreme Court's recent and controversial decision in Kelo v. City of New London, Conn., 125 S. Ct. 2655 (2005).

15. I believe that FCRC is already abusing the power of eminent domain by using it as a

strong-arm negotiating tactic, even though the Project is only in the earliest stages of review. A battery of lawyers has descended on homeowners and businesses in the area, telling them they should accept FCRC's offer to purchase their property at FCRC's given price, or suffer condemnation. FCRC's demolition of buildings in the footprint will likely intimidate these property owners further and destroy any faith they may have in the ability of their government to protect their interests adequately.

16. My staff and I have been meeting with property owners in the proposed footprint. Many feel coerced to sell their property. A majority of those who have not already sold do not want to sell. Yet they understandably do not want to risk having their properties taken by the State, under the law of eminent domain. The threat of eminent domain is being used to force unwilling owners to take what the developer offers, as well as sign an order that they will not speak against the Project, nor attend community meetings. The Project has not even been reviewed, let alone approved, and yet already owners are being pressured to sell their homes and businesses.

17. On December 19, 2005, I requested an opportunity to inspect the buildings at issue with an independent engineer, in order to determine whether demolition is truly necessary to protect public safety. FCRC agreed at first, and an inspection was scheduled for December 20, 2005.

18. That inspection was cancelled without explanation, and a subsequent inspection scheduled for December 21st or December 22nd. However, FCRC informed me that it would not allow me to bring an engineer into the buildings, although I could still inspect on my own. Since my own visual inspection as a lay person would be meaningless to the question of whether the

buildings need to be demolished, I declined the inspection.

19. There is a serious question as to whether the application to demolish is *bona fide*. The fact that FCRC refuses to allow a second engineer's inspection raises sufficiently serious doubts. Add to this the fact that FCRC has owned these properties for some time and may have allowed them to deteriorate, and the existence of earlier inspection reports suggesting that the buildings were not then imminently dangerous – there is more than ample reason to suspect that public safety is not the real purpose of the proposed demolition.

20. Demolishing buildings within the footprint of the project before the project has even been reviewed, while using the threat of eminent domain to pressure local property owners to sell, will send a clear message to those property owners that the approval of the project is a foregone conclusion and they had better sell their properties to the developer before the State takes them away.

21. An environmental review process is not an open and deliberative process in the presence of coercion and fear.

22. Moreover, ESDC, in granting FCRC's application to demolish without taking the requisite "hard look" under SEQRA, sends the wrong message to the public at large: that the environmental review process is a sham and any opposition an exercise in futility.

23. The erosion of public confidence in the integrity of the environmental review process mandated by SEQRA is a serious injury and, I submit, an irreparable one.

**The Presence of the Same Attorney
on Both Sides of This Issue Gives the
Appearance that the State's Review Process is a Sham.**

24. When the same attorney represents both the developer seeking approval and the agency from which approval is sought, there is not only the very real possibility of conflicted interest and favoritism, there is a virtual certainty that it will appear so.

25. An environmental review process cannot be open and deliberative when there is even an appearance of bias or favoritism.

26. David Paget, Esq., a partner of the law firm Sive Paget & Reisel, P.C., has represented both FCRC and ESDC with respect to the Project. In fact, it is my understanding that Mr. Paget has had direct responsibility for ESDC's approval of FCRC's application to demolish the 12 buildings in the footprint, despite the fact that he has also represented FCRC on this project.

27. Attached hereto as Exhibit "A" is a copy of a letter from Mr. Paget, writing on behalf of ESDC, to Jeffrey Baker, Esq., an attorney representing one of the plaintiffs herein, explaining that ESDC has approved FCRC's application to demolish the 12 buildings.

28. Attached hereto as Exhibit "B" is a copy of Mr. Paget's bio from his law firm's web site, as it appeared on February 6, 2006 – well after ESDC approved FCRC's application to begin demolition. Mr. Paget's bio unambiguously identifies his involvement with the Project on behalf of FCRC, as follows:

Among his current engagements, David represents the Forest City Companies regarding the development of a basketball arena and major mixed-use development in Brooklyn[.]

Moreover, the same bio identifies this project as being

[a]mong the many projects and undertakings which David has been a central participant in the preparation of environmental impact statements and in obtaining related permits and approvals, and, most commonly, successfully defending legal challenges to those projects[.]

(emphasis added)

29. How can the same attorney who advertises to the public that he was charged with “obtaining related permits and approvals” for and “defending legal challenges to” the Project on behalf of FCRC, now hold himself out to the public as the lawyer for the State agency charged with granting “permits and approvals” for the same Project? How can the residents of District 35 whom I represent have any confidence in these circumstances that the legally mandated review process is truly open and deliberative, and free from bias and favoritism?

30. Not only has ESDC, a public benefit corporation, failed to exercise independence in reviewing the demolition application, but its independence with respect to the entire Project is compromised by the fact that it is represented by FCRC’s own attorney. ESDC has extraordinary powers here – the power to override local law and local political processes and to condemn private property. As a public benefit corporation, ESDC holds its power in trust for the benefit of the public.

31. At the very least, this apparent conflict requires the scrutiny of this Court before any further action by ESDC with respect to the Project is allowed to proceed.

Conclusion

32. The demolition of 12 buildings within the proposed Project site will begin the process of forever changing my District, even though this massive redevelopment project has not yet been reviewed or approved. FCRC has already created an atmosphere of fear and intimidation through the threat of eminent domain, and there are serious questions as to the *bona fides* of the demolition application and the independence of the public agency approving the demolition application.

33. A preliminary injunction to postpone demolition, pending an inspection and further review of the application, will cause no prejudice whatsoever to FCRC. Once the buildings are torn down, however, they cannot be put back, and the injury to the community – an altered landscape and a loss of faith in the integrity of the environmental review process – is irreparable.

34. A copy of the proposed amicus brief is attached as Exhibit C.

35. No prior application for the relief requested herein has been made.

WHEREFORE, it is respectfully requested that my motion for leave to appear as amicus curiae be granted, and that the petitioners-plaintiffs’ motion for a preliminary injunction be granted.

Letitia James

Sworn to before me this
7th day of February, 2006.

Notary Public