

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

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In the Matter of

VERIFIED PETITION and  
COMPLAINT

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 (4<sup>th</sup> to 5<sup>th</sup> Ave.)  
by its President JUDY SACKOFF;  
PROSPECT HEIGHTS NEIGHBORHOOD  
DEVELOPMENT COUNCIL; ELISELLE ANDERSON  
DAVID SHEETS, KEN DIAMONDSTONE; and  
PACIFIC CARLTON DEVELOPMENT CORP.

Index No.

RJI No.

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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Petitioners/Plaintiffs, by their attorneys Young, Sommer, Ward, Ritzenberg, Baker &  
Moore, LLC allege as follows:

## SUMMARY OF PROCEEDING

1. This is a combined proceeding brought pursuant to Article 78 of the Civil Practice Laws and Rules to annul a determination of the New York State Empire State Development Corporation (ESDC) which allows Forest City Ratner Companies (FCRC) to demolish 13 buildings located in the footprint of FCRC's proposed Atlantic Yards Arena and Redevelopment Project ("Atlantic Yards" or "the Project") in Brooklyn. ESDC has granted permission to demolish the buildings despite the fact that the review of the Atlantic Yards project under the State Environmental Quality Review Act (SEQRA), ECL § 8-0101 *et seq.* is only in the early stages.
2. ESDC as Lead Agency under SEQRA and the primary reviewing and permitting agency for the Project, accepted without any independent review, the representation by FCRC that the subject buildings presented an emergency situation and an imminent threat to public health and safety and thus permissible to demolish under the SEQRA Regulations, 6 NYCRR § 617.5(c)(33). ESDC's determination was illegal, arbitrary and capricious because it failed to have any independent review whatsoever of FCRC's claim, including an independent engineering review of the report submitted to ESDC by FCRC or an inspection of the buildings by a qualified engineer. ESDC also failed to consider whether there were reasonable means to stabilize the buildings and protect the public short of demolition.
3. This proceeding also seeks to enjoin FCRC from demolishing the buildings until independent engineering assessments of the conditions of the buildings can be conducted and a determination made that demolition is necessary to protect public health and safety.

4. This proceeding also seeks to disqualify David Paget, Esq. and the law firm of Sive, Paget & Riesel, P.C. as counsel to ESDC for the Project due to an irreconcilable conflict of interest. Mr. Paget served as an attorney for FCRC for this project before becoming outside counsel for ESDC for the review of the same project. Upon information and belief, Mr. Paget and his law firm continue to serve as attorneys for FCRC on other projects. Mr. Paget's representation of both the private applicant and the public agency reviewing the application undermines public confidence and the expectation that ESDC will undertake an objective review of the Project.
5. This proceeding also seeks a declaration that if FCRC is ultimately permitted to demolish the buildings located at 585-601 Dean Street, it has an obligation to maintain a covered easement on the property for the benefit of Petitioner/Plaintiff Pacific Carlton Development Corp.

## **THE PARTIES**

### Petitioners - Plaintiffs

6. Petitioner/Plaintiff Develop Don't Destroy Brooklyn (DDDB) is a New York State Not-for-Profit Corporation with its principal mailing address located at 89 Fifth Avenue, PMB # 150, Brooklyn, NY, 11217. DDDB has been in existence for over two years and its principal mission is to advocate for greater transparency, government accountability and community involvement in the development of Atlantic Yards. DDDB is concerned that FCRC's Atlantic Yards Project will adversely impact the environment and character of the community by creating a development that is out of scale with the area, will destroy the racial, cultural and economic diversity of the local and wider area, produce

significant adverse traffic impacts and cause an increase in air pollution, to name a few concerns. DDDDB has thousands of members and contributors who both live in the project footprint and in adjacent neighborhoods. DDDDB is also opposed to the use of eminent domain for the project. DDDDB believes that commencing demolition of buildings in the footprint will give the public the perception that the project has been or will be approved and that the public review process is a sham. DDDDB is also very concerned that SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

7. Daniel Goldstein lives in and owns a condominium apartment at 636 Pacific Street. He has owned the apartment since 2003. Mr. Goldstein lives in close proximity to the buildings proposed for demolition on Dean Street and Pacific Street. Mr. Goldstein strongly values the character and community of his neighborhood, reflecting the diversity of Brooklyn within the context of a liveable scaled city-scape. Mr. Goldstein is opposed to the Atlantic Yards Project because of the severe adverse impacts it will have on the local socio-economic and physical environment, irrevocably altering the community character in all aspects, destroying the socio-economic diversity of the area and creating unbearable traffic congestion. Mr. Goldstein is most opposed to the project because he lives in the project footprint and FCRC proposes using ESDC powers of eminent domain to take Mr. Goldstein's property. Mr. Goldstein has no desire to sell his property. Mr. Goldstein is also very concerned that SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that

assures the integrity of the review.

8. Atlantic Avenue Betterment Association (AABA) is a New York State Not-for-Profit membership corporation, representing a strong partnership between local businesses and the community on and around Atlantic Avenue between Hicks Street and Fourth Avenue. AABA was formed in 1993 to address the concerns of the hundreds of people who live and work in that area. AABA members are dedicated to preserving the historic character of the Avenue, as well as improving the quality of life and work, on issues such as safety, traffic calming, zoning issues, sanitation, and Avenue beautification. Members of AABA live within 500 feet of the project footprint and the area AABA serves borders the Project footprint. AABA is actively involved in the review of the Atlantic Yards Project AABA is very concerned with the scale and impacts of the proposed Atlantic Yards Project on the neighborhood that it serves. AABA believes the project will have significant adverse impacts on the local environment, including *inter alia* traffic, air pollution, will have significant adverse impacts on health, will undermine public safety and security, destroy community character and have adverse visual impacts. AABA is also very concerned that SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.
9. Fort Greene Association (Fort Greene) is a New York State Not-for-Profit Corporation serving the Fort Greene neighborhood of Brooklyn. Fort Greene has been in existence for approximately 12 years. Fort Greene is devoted to neighborhood and park enhancement, historic preservation, as well as cultural, economic, and housing advancement. Fort Greene is very concerned with the scale and impacts of the proposed

Atlantic Yards Project on the neighborhood that it serves. Members of Fort Greene live within 500 feet of the Project footprint and Fort Greene borders the Project footprint. Fort Greene is actively involved in the review of the Atlantic Yards Project Fort Greene believes the project will have significant adverse impacts on the local environment, *inter alia* traffic, air pollution, and on community character. Fort Greene is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

10. Boerum Hill Association (Boerum Hill) is a New York State Not-for-Profit Corporation that serves the Boerum Hill area of Brooklyn and is a voice for all residents -- owners, renters, and business owners -- interested in preserving and improving the quality of life in Boerum Hill. Boerum Hill has been in existence for 43 years. Boerum Hill borders the Project footprint and has members who live within 500 feet of the Project footprint. Boerum Hill is actively involved in the review of the Atlantic Yards Project. Boerum Hill believes the project has the potential to cause significant adverse impacts on the local environment, including *inter alia* traffic and air pollution, and significant impacts on public health, and community character. Boerum Hill is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.
11. Fifth Avenue Committee (FAC) is a New York State Not-for-Profit Corporation serving the Fifth Avenue area of Brooklyn in the vicinity of the Project. FAC has been in existence for 29 years. The mission of FAC is to advance social and economic justice

principally by developing and managing affordable housing, creating employment opportunities, organizing residents and workers, providing adult-centered education opportunities, and combating displacement caused by gentrification. FAC is actively involved in the review of the Atlantic Yards Project. FAC has organized tenants who live within the Project footprint. FAC believes the project will negatively affect the cultural, economic and racial diversity of the local and wider area and will have significant adverse impacts on the local environment, including *inter alia* traffic and air pollution. FAC is very concerned that the project will result in the forced relocation of tenants it has organized who live within the footprint. FAC is also very concerned about the secondary displacement that the project will cause on its members through gentrification. FAC is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

12. East Pacific Block Association (East Pacific) is a New York State Not-for-Profit Corporation serving the Pacific Street area in Brooklyn. East Pacific has been in existence for 15 years. One of the two blocks of East Pacific lies adjacent to the Project footprint. East Pacific works to improve the quality of life and environment for residents of the East Pacific block. East Pacific is actively involved in the review of the Atlantic Yards Project. East Pacific believes the project will negatively affect cultural, economic and racial diversity, will have significant adverse impacts on the local environment, including *inter alia* traffic and air pollution, will undermine public safety and security, cause destruction of community character and have adverse visual impacts. East Pacific

is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

13. Prospect Heights Action Coalition (PHAC) is an Unincorporated Association that has been in existence for 3 and one-half years. Patti Hagan is the President of PHAC. PHAC came together in July 2002, to defend Prospect Heights, a neighborhood whose living history dates to the 18th century, from the inroads of predatory developers and lenders, who had begun to target the neighborhood as vulnerable, ripe for takeover and destruction. In July 2003, PHAC was the first and only voice of warning of FCRC's secret designs on Prospect Heights. Members of PHAC live within 500 feet of the Project footprint. PHAC is actively involved in the review of the Atlantic Yards Project PHAC believes the project will negatively affect cultural, economic and racial diversity and will have significant adverse impacts on the local environment, including *inter alia* traffic, air pollution, destruction of community character and adverse visual impacts. PHAC is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.
14. Pratt Area Community Council (PACC) is a New York State Not-for Profit Corporation which has been in existence for approximately 42 years. PACC embraces a vision in which people strive together to build an equitable, diverse, engaged, and flourishing community in central Brooklyn. PACC's work as a community development corporation, pursues five major goals: first, to preserve and develop safe and affordable housing, a



basic human right; second, to support a vibrant local commerce through which small businesses serve the market need of community residents; third, to sustain and develop an economic, racial, and cultural diversity that can enrich the lives of all; fourth, to promote knowledge, initiative, and concerted action that can advance individual and common interests; and fifth, to foster an ethic that all members of the community bear personal responsibility to contribute to the greater good. To fulfill those goals PACC is actively involved in the review of the Atlantic Yards Project and is concerned that its environmental impacts will adversely impact the area. Members of PACC live within 500 feet of the Project footprint. PACC believes the Project will negatively affect, cultural, economic and racial diversity and will have significant adverse impacts on the local environment, including *inter alia* traffic and air pollution. PACC is also very concerned about the secondary displacement that the project will cause on its members through gentrification. PACC is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

15. Society for Clinton Hill (Clinton Hill) is a New York State Not-for-Profit Corporation that has been in existence for 36 years. Clinton Hill's mission includes the promotion of the public good through activities designed to combat community deterioration in the Clinton Hill Historic District and the surrounding areas of Brooklyn. Members of Clinton Hill live within 500 feet of the Project footprint. Clinton Hill has been actively involved in the review of the Project. Clinton Hill is very concerned with the scale and impacts of the proposed Atlantic Yards Project on the neighborhood that it serves.

Members of Clinton Hill live within 500 feet of the Project footprint and Clinton Hill borders the Project footprint. Clinton Hill believes the project will have significant adverse impacts on the local environment, *inter alia* traffic, air pollution, and on community character. Clinton Hill is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

16. Dean Street Block Association (4th to 5th Ave) (Dean Street) is an Unincorporated Association serving the area of Dean Street between 4th and 5th Avenues. Judy Sackoff is the President. Dean Street has been in existence for 25 years and advocates for the interests of the block to improve the quality of life and maintain the community. All of the members of Dean Street live within 500 feet of Project footprint. Dean Street is actively involved in the review of the Atlantic Yards Project. Dean Street believes the Project will negatively affect cultural, economic and racial diversity and will have significant adverse impacts on the local environment, including *inter alia* traffic, air pollution, destruction of community character and adverse visual impacts. Dean Street is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.
17. Prospect Heights Neighborhood Development Council (Prospect Heights) is a New York State Not-for-Profit Corporation. Prospect Heights was formed in the spring of 2004 by a group of neighborhood associations concerned about the course of development in Prospect Heights, and interested in working together to ensure that future development in

the area address the needs and reflect the values of the citizens of Prospect Heights. Members of Prospect Heights live within 500 feet of the Project footprint. Prospect Heights is actively involved in the review of the Atlantic Yards Project Prospect Heights is concerned that the Project has the potential to have significant adverse impacts on the local environment, including *inter alia* traffic, air pollution, can undermine public safety and security, and could cause destruction of community character. Prospect Heights is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

18. Eliselle Anderson is a resident and rent stabilized tenant who lives at 624 Pacific Street. Ms. Anderson lives within the Project footprint and near to 620 Pacific Street which was approved for demolition by ESDC. She is adjacent to 622 Pacific Street which FCRC has announced its intention to demolish and ESDC has indicated it will approve. Ms. Anderson has no intention of leaving the building unless she is forced to vacate by the project developer, FCRC. Ms. Anderson believes that demolition of the buildings on Pacific Street will alter the character and leave people with the impression that the project has been approved and will be built. In addition to concern about losing her home, Ms. Anderson believes the Project will negatively affect cultural, economic and racial diversity and will have significant adverse impacts on the local environment, including *inter alia* traffic, air pollution, destruction of community character and adverse visual impacts. Ms. Anderson is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and

transparent manner that assures the integrity of the review.

19. David Sheets is a tenant who lives at 479 Dean Street in the Project footprint. Mr. Sheets lives in close proximity to the buildings proposed for demolition on Dean Street. Mr. Sheets has no intention of leaving the building unless he is forced to vacate by the project developer, FCRC. Mr. Sheets believes that demolition of the buildings on Pacific Street will alter the character and leave people with the impression that the project has been approved and will be built. In addition to concern about losing his home, Mr. Sheets believes the Project will negatively affect cultural, economic and racial diversity and will have significant adverse impacts on the local environment, including *inter alia* traffic, air pollution, destruction of community character and adverse visual impacts. Mr. Sheets is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.
20. Ken Diamondstone is a 35 year resident of Brooklyn and owns property in Prospect Heights and Boerum Hill. Mr. Diamondstone serves on the traffic and public safety committee of Community Board 2. Mr. Diamondstone is Chairperson of the Brooklyn Solid Waste Advisory Board. Mr. Diamondstone also serves on the Board of Directors of the Atlantic Ave Local Development Corporation, whose mission is to enhance the economic well-being of the community on and around Atlantic Ave. Mr. Diamondstone is commencing this proceeding in his individual capacity. Mr. Diamondstone believes the Project will negatively affect cultural, economic and racial diversity and will have significant adverse impacts on the local environment, including *inter alia* traffic, air

pollution, could have significant adverse impacts on public safety and security, will cause destruction of community character and adverse visual impacts. Mr. Diamondstone is also very concerned that the SEQRA review process and the general project review process by ESDC be conducted in an objective and transparent manner that assures the integrity of the review.

21. Pacific Carlton Development Corp. (Pacific Carlton) is a New York State Corporation with its principal office located at 504 Broadway, New York , New York. Pacific Carlton is the owner of a building located at 754 Pacific Street. That property has an easement on 585-601 Dean Street that is planned for demolition that will likely adversely affect the easement. Pacific Carlton's property is also located in the Project footprint and will be subject to condemnation by eminent domain if the Project is approved. Pacific Carlton is not interested in selling its property to FCRC and prefers to utilize it for its own economic purpose. Pacific Carlton is very concerned that approval of the project will not only result in the loss of its property, but will change the character and environment of the area. Pacific Carlton has a strong interest in the transparency and integrity of the process and relies upon an honest and objective review by ESDC.

Respondents - Defendants

22. Empire State Development Corporation (ESDC) is the current operating name of the New York State Urban Development Corporation a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation. ESDC is organized and authorized by the New York State Urban Development Corporation Act; McKinney's Unconsolidated Laws Chapter 24. ESDC's principal

office is located at 633 Third Avenue, New York, New York. ESDC is serving as Lead Agency for the SEQRA review of the Project.

23. Upon information and belief Forest City Ratner Companies (FCRC) is a corporation authorized to do business in New York with its principal place of business located at One MetroTech Center North, Brooklyn, New York. FCRC or its subsidiaries owns the buildings proposed for demolition. FCRC is the project applicant to build the Atlantic Yards Project.

#### **VENUE**

24. This proceeding is properly venued in New York County as that is county in which ESDC maintains its principal offices and is the location where the determination seeking to be annulled was made.

#### **RELEVANT REGULATIONS**

25. The New York State Environmental Quality Review Act (SEQRA), directs all state and local agencies to act as a steward of the environment and that in their regulation of the activities of individuals and corporations they shall do so that “due consideration is given to preventing environmental damage”. ECL § 8-0103(9).
26. Implementation of SEQRA is governed by the New York State Department of Environmental Conservation’s SEQRA regulations which are applicable to all agencies. 6 NYCRR § 617.3(a) provides:

No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. The only exception to this is provided under paragraphs 617.5(c)(18), (21) and (28) of this Part.

27. The SEQRA regulations also divide “actions” which are potentially subject to SEQRA into three types: Type I, Type II and Unlisted Actions. Type I actions are major actions with a legal presumption that they are more likely to have a significant impact on the environment and thus require the preparation of an environmental impact statement. Type II actions are those actions which individually or cumulatively are so small that they have been determined, as a matter of law as to not have the potential for a significant impact on the environment and are exempt from jurisdiction under SEQRA. Unlisted Actions are all actions that are neither Type I nor Type II.
28. Included within the listed Type II actions is a provision concerning emergency situations. 6 NYCRR § 617.5(c)(33). It exempts from SEQRA’s requirements:
- emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part.

### **PROJECT BACKGROUND**

29. Upon information and belief, in or about December 2003, FCRC announced the Atlantic Yards Project which consists of a new arena for the NBA New Jersey Nets team which has been purchased by a group headed by FCRC principal Bruce Ratner. In addition to the basketball arena, the project includes approximately 9 million square feet of residential, office and commercial space located in approximately 16 high-rise towers. Included therein is an approximately 850, 000 gross square foot arena accommodating up

- to 20,500 persons, 7,300 residential units, 4,000 parking spaces and a 180 room hotel.
30. The project area encompasses a 22-acre area in Brooklyn that includes the Metropolitan Transportation Authority's Vanderbilt Yards and several blocks of currently occupied residential and commercial buildings.
  31. The project area is roughly bounded by Flatbush and Fourth Avenues to the west, Vanderbilt Avenue to the east, Atlantic Avenue to the north, and Dean Street to the south.
  32. The parcels included in the project area are: Block 927: Lots 1 and 16; Block 1118: Lots 1, 5, 6, 21-25 and 27; Block 1119: Lots 1, 7 and 64; Block 1120: Lots 1, 19, 28 and 35; Block 1121: Lots 1, 42 and 47; Block 1127: Lots 1, 10-13, 18-22, 27, 29, 30, 33, 35, 43, 45-48, 50, 51, 54-56, 1001-1021 and 1101-1131; Block 1128: Lots 1, 2, 4 and 85-89; and Block 1129: Lots 1, 3-6, 13, 21, 25, 39, 43-46, 49, 50, 54, 62, 76 and 81.
  33. Upon information and belief, FCRC began buying properties in the project area in early 2004. .
  34. On or about February 18, 2005 FCRC, ESDC and New York City entered into a Memorandum of Understanding governing the scope and approval for the Atlantic Yards Project.
  35. Upon information and belief, at some time in 2005 ESDC classified the Atlantic Yards Project as a Type I Action under SEQRA and circulated notice of its intent to act as Lead Agency under SEQRA to other Involved Agencies, thereby formally beginning the SEQRA review of the project.
  36. On September 16, 2005, ESDC released a Notice of Public Scoping and a "Draft Scope of Analysis for an Environmental Impact Statement" for the Atlantic Yards Project. A



public scoping hearing was held on October 18, 2005 and written comments were received by ESDC until October 28, 2005.

37. As of this date ESDC has not issued a Final Scoping Document nor has it released a Draft Environmental Impact Statement for the project.
38. Upon information and belief, ESDC, in consultation with David Paget and Sive, Paget & Riesel, P.C. have reviewed the comments submitted on the Draft Scoping Document and are nearing completion of the Final Scoping Document.
39. ESDC under its authorizing legislation, the New York State Urban Development Corporation Act; NY Unconsolidated Laws §§ 6251 et. seq. has the authority to deem a project a "State Project" which provides a variety of important powers, including, *inter alia* the power to override local zoning and land use approval processes and the power of eminent domain to acquire property not owned or controlled by a project applicant.

#### **THE PROPOSED DEMOLITIONS**

40. Upon information and belief, in or about the first week of December 2005, FCRC met with staff at ESDC to propose the demolition of the instant buildings. FCRC presented a November 7, 2005 report prepared by LZA Technology and entitled "Summary Report of the Existing Structural Condition Surveys" (LZA Report). A copy of the LZA Report is attached hereto as Exhibit A.
41. The LZA Report is a summary of inspections of various properties owned or controlled by FCRC or its subsidiary entities. The LZA report concluded that the properties located at 608-620 Atlantic Avenue, 461 Dean Street, 463 Dean Street, 585-601 Dean Street and 620 Pacific Street are in imminent danger of collapse or present a risk of falling masonry

or otherwise present an imminent threat to public safety and require immediate demolition.

42. The LZA Report indicates that the November 2005 inspections were not the first time that LZA did a survey of the buildings. The LZA report refers to previous inspections in May and November 2004.
43. On December 15, 2005, Rachel Shatz of ESDC wrote a memo to the project file stating that ESDC had reviewed the LZA report and confirmed that the buildings present imminent threat to public health and safety and the need for the demolition constituted an emergency which is a Type II action under SEQRA (the "Emergency Declaration"). A copy of the Emergency Declaration memo is attached as Exhibit B.
44. The footer at the bottom of the ESDC memo indicates that it was initially drafted on December 5, 2005.
45. On December 16, 2005 FCRC issued a press release announcing its plans to demolish the buildings located at 608-620 Atlantic Avenue, 461 Dean Street, 463 Dean Street, 585-601 Dean Street and 620 Pacific Street. The FCRC press release also announced that 622 Pacific Street would be demolished. A copy of the press release is attached as Exhibit C.
46. During the week of December 19, 2005, DDDB obtained a copy of the LZA report.
47. Also during the week of December 19, 2005, DDDB and various local politicians requested an opportunity to inspect the buildings with the assistance of an independent engineer.

48. Initially, FCRC agreed to the request and an inspection was scheduled for Tuesday, December 20, 2005 to include, among others, representatives of DDDDB, Councilwoman Letitia James, and an independent engineer.
49. That inspection was cancelled by FCRC without explanation, and a subsequent inspection was scheduled for December 21<sup>st</sup> or 22<sup>nd</sup>. However, FCRC informed DDDDB that it would not be permitted to be present at the inspection and it informed Councilwoman James that she would not be permitted to bring an engineer to the inspection.
50. Since Councilwoman James is not an engineer, she declined to do the inspection without having a professional engineer with her to determine the extent of the alleged threat to public health and safety.
51. In a December 29, 2005 letter to Jeffrey S. Baker, Esq., attorney for Develop Don't Destroy Brooklyn, Mr. Paget as counsel to ESDC stated that ESDC's Emergency Declaration did not apply to 622 Pacific Street, but noted that ESDC had been informed by FCRC that an engineer's report would be submitted in support of demolition of 622 Pacific Street. A copy of the letter from Mr. Paget is attached as part of Exhibit B.
52. DDDDB retained the services of Jay Butler, P.E. to review the LZA report and do an external inspection. Mr. Butler has submitted an affidavit with this proceeding concluding that the buildings do not present an imminent threat to public health and safety and recognizing that an internal inspection is required before a definitive assessment can be made. Attached hereto as Exhibit D are some pictures Mr. Butler took of some of the buildings.

53. Upon information and belief, FCRC has begun the initial efforts towards demolition and actual demolition may begin at any time.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST  
THE EMPIRE STATE DEVELOPMENT CORPORATION**

54. Petitioners/Plaintiffs repeats and realleges paragraphs 1 through 53 as if fully set forth.
55. ESDC acted illegally and arbitrarily and capriciously when it issued the Emergency Declaration and approved the demolition of the buildings as an emergency Type II action under SEQRA.
56. The language of the Emergency Declaration itself demonstrates that ESDC did not undertake any independent evaluation by a professional engineer of either the LZA report or the buildings themselves.
57. The Emergency Declaration states that its author, Rachel Shatz, only reviewed the report herself, consulted with unnamed ESDC staff and ESDC's counsel (David Paget) before concurring with FCRC's request.
58. ESDC did not inquire as to the results of the earlier surveys of the buildings, any reports or recommendations that may have been issued by LZA to FCRC nor did it inquire as to FCRC's culpability with respect to the deterioration of the structures or measures which could have been undertaken to secure and stabilize the buildings without resorting to demolition.
59. ESDC's issuance of the Emergency Declaration violated SEQRA because ESDC failed to take a hard look at the consequences of its action and acceded to the representation of

FCRC and without any independent assessment of the validity of the claim.

60. ESDC's action violated SEQRA by allowing a change in the physical environment before the completion of the SEQRA process and authorized an emergency action that permitted complete demolition without consideration of less drastic measures that would cause the least disturbance to the environment.
61. ESDC's actions do significant harm to the SEQRA process by giving the public the perception that the Atlantic Yards Project is a foregone conclusion headed toward approval and that physical actions are underway to permanently change the fabric of the community.
62. ESDC's Emergency Declaration must be annulled.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
FOREST CITY RATNER COMPANIES**

63. Petitioners/Plaintiffs repeat and reallege paragraphs 1 through 62 as if fully set forth.
64. FCRC has refused to allow an independent investigation of the buildings to determine if they pose an imminent threat to public health and safety.
65. FCRC has owned the buildings for a significant period of time and has failed to take reasonable steps to secure and stabilize the buildings to prevent their deterioration.
66. Any threat to public health and safety posed by the buildings is directly attributable to FCRC's purposeful or benign neglect.
67. FCRC seeks to obtain at least a psychological advantage by demolishing the buildings and presenting the impression that its project is moving forward and other owners and tenants in the area should agree to sell their properties to FCRC.
68. FCRC's planned demolition is a violation of SEQRA's requirement that there not be any

physical change in the environment while the project is undergoing SEQRA review.

69. FCRC should be enjoined from demolishing the buildings.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST  
THE EMPIRE STATE DEVELOPMENT CORPORATION  
DECLARING THAT A CONFLICT OF INTEREST EXISTS  
WITH SIVE, PAGET & RIESEL, P.C. SERVING AS SPECIAL COUNSEL**

70. Petitioners/Plaintiffs repeat and reallege paragraphs 1 through 69 as if fully set forth.
71. David Paget is a partner in the law firm of Sive, Paget & Riesel, P.C. (Sive Paget).
72. Mr. Paget and Sive Paget have been attorneys on a regular and continuing basis for FCRC.
73. Mr. Paget represented FCRC on the Atlantic Yards Project.
74. Mr. Paget currently acts as special outside counsel representing ESDC in its review of the Atlantic Yards Project. Upon information and belief, sometime in 2005 Mr. Paget switched from representing FCRC to representing ESDC on the Atlantic Yards Project.
75. Mr. Paget's representation of FCRC both generally and specifically on this project and his representation of ESDC on the same project represents at a minimum the appearance of a conflict of interest if not a clear conflict of interest.
76. ESDC has enormous power and authority with respect to the review and approval of Atlantic Yards. ESDC's statutory authority includes the ability to override New York City's zoning requirements and Uniform Land Use Review Process (ULURP). If ESDC approves the project, it will confer the powers of eminent domain upon the project to acquire parcels from property owners unwilling to sell their property to FCRC.
77. ESDC's authority constitutes a disenfranchisement of Brooklyn residents who otherwise could rely upon the City zoning regulations and the public review process embodied in

ULURP.

78. The public has right to expect that ESDC in the exercise of its extraordinary authority will act in an honest and objective manner and in the public interest without the perception of bias or a conflict of interest.
79. By relying upon the legal advice of an attorney who represents the applicant on a variety of projects, including the project under review by ESDC, there exists, at a minimum, a clear perception of a conflict of interest.
80. That conflict of interest is brought into stark reality by the ESDC's Emergency Declaration where Ms. Shatz notes that she conferred only with ESDC staff and ESDC's counsel - presumably Mr. Paget. Upon information and belief, Mr. Paget did not recommend an independent evaluation of the LZA Report by a professional engineer.
81. Mr. Paget's dual representation of FCRC and ESDC undermines the public's faith in the process and presents a clear conflict of interest. Mr. Paget and his firm must be disqualified from representing either ESDC or FCRC in the review of the Atlantic Yards Project.
82. In addition to a prospective disqualification of Mr. Paget and his firm, the Court should direct ESDC to refrain from issuing a Final Scoping Document until new independent special counsel can review the Draft Scoping Document, the comments thereon and the Final Scoping Document to assure that is not affected by the conflict of interest.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST  
FOREST CITY RATNER COMPANIES SEEKING A  
DECLARATORY JUDGEMENT TO PRESERVE AN EASEMENT**

83. Petitioners/Plaintiffs repeat and reallege paragraphs 1 through 82 as if fully set forth.

84. Petitioner Pacific Carlton Development Corp., (Pacific Carlton) is the owner of a building located at 754 Pacific Street in Brooklyn.
85. 754 Pacific Street has a covered easement over 585-601 Dean Street which is an adjoining property. The easement mandates that 585-601 Dean Street maintain an easement of not more than 13 feet 8 inches at its southerly end and 17 feet at its northerly end. That easement mandates that the owner of 585-601 Dean Street maintain a covered area for the benefit of 754 Pacific Street.
86. If FCRC proceeds with the demolition of 585-601 Dean Street, then the covered easement on the property will no longer be maintained.
87. Pacific Carlton seeks a declaratory judgment that FCRC must maintain the covered easement as provided in the deed dated April 3, 1985 from Kathryn Yatrakis and Nicolina Athineos to Pacific Carlton Development Corp., and recorded at Reel 1030, Page 1023 in Kings County, New York.

**REQUEST FOR DISCOVERY PURSUANT TO CPLR 408**

88. Plaintiffs/Petitioners repeat and reallege paragraphs 1 through 87 as if fully set forth.
89. Pursuant to CPLR Sec. 408, Petitioners/Plaintiffs request permission to take discovery of FCRC on the issue relevant to claimed imminent threat to public health and safety presented by the subject buildings. Discovery is necessary for the Court to determine the extent of the threat and whether other means are available to stabilize the buildings without complete demolition.
90. The LZA report is characterized as a “summary” and refers to prior inspections of some or all of the buildings in May and November 2004.



91. The scope of discovery will be limited to production of documents (CPLR 3120) and permission to inspect the buildings by a professional engineer. This limited discovery will provide the Court and the parties with relevant information necessary for a determination of the proceeding and will be subject to the Court's supervision under CPLR 408.

WHEREFORE, Petitioners/Plaintiffs respectfully request relief as follows:

a. Annuling the December 15, 2005 Emergency Declaration of ESDC which permitted the demolition of 608-620 Atlantic Avenue, 461 Dean Street, 463 Dean Street (both structures), 585-601 Dean Street and 620 Pacific Street.

b. Permanently enjoining FCRC from demolishing the buildings pending completion of the SEQRA process for Atlantic Yards

c. Disqualifying David Paget, Esq., and Sive, Paget & Riesel, P.C. from representing ESDC and/or FCRC on the Atlantic Yards Project.

d. Declaring Pacific Carlton's rights with respect to the covered easement on 585-601 Dean Street and directing FCRC to maintain said easement; and

e. Awarding Petitioners/Plaintiffs attorneys' fees, costs and disbursements in this action and such other and further relief that the Court deems just and proper. No prior application for the relief requested herein has heretofore been made.

Dated: January 17, 2006  
Albany, New York

**YOUNG, SOMMER, WARD, RITZENBERG,  
BAKER & MOORE, LLC**

By: \_\_\_\_\_

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