

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

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In the Matter of

DEVELOP DON'T DESTROY BROOKLYN, et al.

Sup. Ct. N.Y. Co.
Index No. 100686/06

Petitioners - Respondents - Appellants

- against -

EMPIRE STATE DEVELOPMENT CORPORATION

Respondent - Appellant

and

FOREST CITY RATNER COMPANIES,

Respondent.

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AFFIDAVIT OF LETITIA JAMES

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

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 (the "Project").

2. This is a matter of critical public interest and involves nothing less than the public's trust in government.

3. The Project is of an enormous magnitude, highly controversial and overwhelmingly opposed by the citizens within my District. The Project would require the closing of City streets, would use 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 a thriving, vibrant and historically low-rise neighborhood.

4. Many of the residents within my District who believe that the Project would have a significant detrimental impact on the community environment 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 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.

5. Neither I nor my constituents are against development. There are many development projects within my District on which I am currently working. But what my constituents and I do oppose is development that destroys the character of a community, ignores community standards and local elected officials, and serves the interests of the developer at the expense of the public.

6. I respectfully submit this Affidavit in support of my motion to appear as *amicus curiae* in opposition to the appeal by the Empire State Development Corporation ("ESDC") of Justice Edmead's February 14, 2006 Order disqualifying David Paget, Esq., from acting as attorney for ESDC in its environmental review of the Project. I make this motion on behalf of myself as well as my colleagues State Senator Velmanette Montgomery and U.S. Representative Major R. Owens, who also represent the citizens living closest to and most directly affected by

the proposed Project.

7. Although I disagree with the permission granted to FCRC to demolish certain buildings within the Project footprint – because I am not convinced that it is necessary, I am not convinced that ESDC took an objective look at FCRC’s demolition application, and I believe that demolition sends an unmistakable message to the community that the Project is a foregone conclusion – those arguments are adequately addressed by the petitioners. The proposed brief of the *amici curiae* addresses only the conflict of interest in David Paget’s dual representation.

8. As local representatives of the Districts most affected by the Project, I and my fellow *amici* have uniquely relevant and immediate concerns. We believe that our participation in this case as *amicus curiae* would be of special assistance to the Court.

9. In fact, the court below, in ruling in favor of the petitioners on the conflict issue, relied in part on the arguments I made as *amicus curiae*. As Justice Edmead stated in announcing her decision from the bench:

I think that... it is of no small moment what councilwoman James has articulated, on what the impact of allowing someone to stay in that position would have on the community’s view of the project, on the view of openness, fairness, doing what is good and right and best for the area, for the city. It is just so tainted in appearance that the court is going down on that side.

Again, thank you very much councilwoman James.

(R. 916)

10. The *amici* are 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.

11. 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.

12. Of great concern 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).

13. 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.

14. 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 agreement 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.

15. While the merits of the Project itself are not under review here, I must speak briefly

to ESDC's statements about its alleged benefits. ESDC hails the Project as one that will, among other things, eliminate blighted conditions and provide affordable housing and living-wage jobs.

16. Statements such as these indicate a predisposition toward the Project, which makes it ever so important that ESDC's environmental attorney not be an individual with long-standing loyalties to the developer.

17. I also take issue with these claims. While the MTA's Atlantic Yards need to be developed, the surrounding community is anything but blighted. New business are opening all the time; the commercial strips are thriving; brownstones are selling for over one million dollars. And while I am strongly in favor of creating affordable housing and living-wage jobs, I have seen FCRC's proposal for doing so and neither I nor the local citizens opposed to the Project are convinced that these promises can or will be met.

18. I have seen the letters from other area politicians written in support of the Project and made a part of the record here. They were written over a year ago, in the absence of pertinent information that has since come to light, by elected officials who represent areas of Brooklyn that either do not include the neighborhoods in the immediate vicinity of the Project, or include so many other communities that these officials cannot be said to represent the views of the constituents whom the Project directly affects.

19. Because the Project is so controversial it is critical that the environmental review process not only *be* objective and fair, but *appear* objective and fair.

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

21. In fact, residents within my District who are opposed to the Project were outraged to learn that FCRC's own lawyer was also representing ESDC in its environmental review of the Project under SEQRA.

22. I take issue with the notion, espoused by ESDC, that the relationship between ESDC and the developer is "collaborative." Given that SEQRA's mandate is not the approval of development projects but the consideration and protection of the environment, and given that the environment belongs to the public, if the agency and the developer are collaborating, then who is watching out for the environment and the public?

23. I agree with the petitioners that the SEQRA process is – must be – more aptly characterized as "arm's length."

24. The public has a right to expect that a public benefit corporation such as ESDC will serve the public interest and perform its duties objectively and independently, not in collaboration with the developer.

25. 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.

26. In the context of this highly controversial project, the representation by the same environmental lawyer of both the developer and the reviewing/approving agency undermines the public's faith in government and its ability to adequately protect the public's interest, leads to a cynical view of political processes, and shakes the core of our belief in the integrity of the environmental review process. Public cynicism and distrust of government explains why so few people vote.

27. To permit FCRC's attorney to continue representing ESDC in its environmental review of the Project will likely destroy any faith local citizens and property owners may have in the ability of their government to protect their interests adequately.

28. In short, our core democratic values are at stake here.

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

WHEREFORE, it is respectfully requested that the motion for leave to file an *amicus* brief be granted, and that the order of the court below disqualifying David Paget, Esq. from representation ESDC in connection with the Project be affirmed.

Letitia James

Sworn to before me this
day of March, 2006.

Notary Public