

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

In the Matter of

DEVELOP DON'T DESTROY BROOKLYN; COUNCIL OF BROOKLYN NEIGHBORHOODS, INC.; ATLANTIC AVENUE BETTERMENT ASSOCIATION; BERGEN STREET-PROSPECT HEIGHTS BLOCK ASSOCIATION, INC.; BOERUM HILL ASSOCIATION; BROOKLYN BEARS COMMUNITY GARDENS, INC.; BROOKLYN VISION FOUNDATION, INC.; CARLTON AVENUE ASSOCIATION; CARROLL STREET BLOCK ASSOCIATION BETWEEN FIFTH AND SIXTH AVENUES, INC.; CROWN HEIGHTS NORTH ASSOCIATION, INC.; DEAN STREET BLOCK ASSOCIATION (4<sup>th</sup> to 5<sup>th</sup> Ave.) by its President JUDY SACKOFF; EAST PACIFIC BLOCK ASSOCIATION; FORT GREENE ASSOCIATION, INC.; FORT GREENE PARK CONSERVANCY, INC.; MARILYN OLIVA FRIENDS AND RESIDENTS OF GREATER GOWANUS by its President MARILYN OLIVA; NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC ("NYPIRG"); PARK PLACE-UNDERHILL AVENUE BLOCK ASSOCIATION by its President LINNEA CAPPS; PARK SLOPE NEIGHBORS, INC.; PROSPECT HEIGHTS ACTION COALITION by its President PATRICIA HAGAN; PROSPECT PLACE OF BROOKLYN BLOCK ASSOCIATION, INC.; SIERRA CLUB, INC.; SOCIETY FOR CLINTON HILL, INC.; SOUTH OXFORD STREET BLOCK ASSOCIATION by its President ABBY WEISSMAN; SOUTH PORTLAND AVENUE BLOCK ASSOCIATION; and ZEN ENVIRONMENTAL STUDIES INSTITUTE

Petitioners - Plaintiffs

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

- against -

URBAN DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT CORPORATION;  
FOREST CITY RATNER COMPANIES, LLC;  
METROPOLITAN TRANSPORTATION AUTHORITY; and  
NEW YORK STATE PUBLIC AUTHORITIES CONTROL BOARD

Respondents - Defendants

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**AFFIDAVIT OF  
JEFFREY S. BAKER, ESQ.  
PURSUANT TO CPLR §2217(b)**

Index No.

RJI No.

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF ALBANY     )

1. I am an attorney licensed to practice law in the State of New York and I am a partner at the law firm of Young, Sommer, Ward, Ritzenberg, Baker and Moore, LLC.

2. I am the attorney for Petitioners-Plaintiffs in the above entitled combined action-proceeding and I make this affidavit in support of Petitioners-Plaintiffs motion for a preliminary injunction.

3. Respondent Forest City Ratner Companies (FCRC) its contractors or agents have applied for demolition permits to demolish 18 buildings on the Project site. It is our understanding that FCRC is currently engaged in pre-demolition activities in the buildings, including asbestos abatement and will be prepared to begin actual demolition at any time.

4. If the demolition of the buildings takes place and is completed before the merits of this case are decided, Petitioners could be faced with the prospect of large expanses of cleared vacant lots that will permanently alter the neighborhood character. Where there are currently buildings that contribute to the built environment, including the historic Ward's Bakery, there will only be open spaces. Buildings that could be renovated and put to productive re-use will be eliminated and an area that is not blighted, will become blighted.

5. I have reviewed all of the documents and pleadings underlying the instant action, and believe that the Petitioners' claims have substantial merit. The argument in support of the motion for a preliminary injunction is set forth in the accompanying memorandum of law.

6. I also submit this affidavit pursuant to CPLR §2217(b), which requires disclosure of any prior motion for similar relief.

7. On January 17, 2006, Petitioners<sup>1</sup> made an application to this court for a temporary restraining order and preliminary injunction enjoining Respondent-Defendant Forest City Ratner Companies ("FCRC"), pending a determination of the Petition, from taking any action related to the demolition of certain buildings located within the footprint of the proposed Atlantic Yards Project (hereinafter "Project") footprint.

8. This January 17, 2006 application further sought to annul the determination of the Empire State Development Corporation ("ESDC"), the lead agency for the Project under the State Environmental Quality Review Act SEQRA ("SEQRA"), finding that the demolition sought be undertaken by FCRC was a Type II emergency action, thereby exempting the demolitions from SEQRA review. (6 NYCRR §617.5( c) (33)). This application requested further relief including: the disqualification of the ESDC's outside counsel; a declaratory judgment to preserve an easement; and requesting discovery, all of which are unrelated to the current action-proceeding and request for a preliminary injunction.

9. The only relief sought in the previous application which is related to the current application is the request for the annulment of the Type II classification of the demolition as an emergency action under SEQRA and the enjoining of the applicant from demolishing buildings without complying with SEQRA.

10. By a decision of the New York County Supreme Court, Hon. Carol Edmead, entered February 15, 2006, the cross-motions made by the ESDC and FCRC to dismiss those parts of the

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<sup>1</sup> Please note that the Petitioners and Respondents in all of the prior litigation referenced in this affidavit are not identical to those in the current action/proceeding. The Petitioners in the previous litigation were: 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. The Respondents in the prior litigation were: EMPIRE STATE DEVELOPMENT CORPORATION and FOREST CITY RATNER COMPANIES.

Petition that sought to annul the Emergency Declaration by ESDC that permitted FCRC to demolish buildings located in the footprint without undergoing review pursuant to SEQRA, were granted.

11. The New York State Appellate Division, First Department modified the February 15, 2006 order and entered a decision on May 30, 2006 affirming the Supreme Court decision related to the classification of the emergency declaration under SEQRA.

12. Since the January 17, 2006 application, many new facts have surfaced. Specifically, since that date the ESDC has issued a draft Scope of Work, a final Scope of Work, a Draft Environmental Impact Statement, and a Final Environmental Impact Statement.

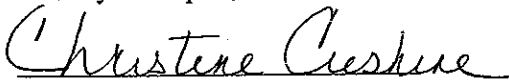
13. The current application seeks to challenge the procedural and substantive review undertaken by the ESDC and other Respondents based upon actions taking place subsequent to the former application.

14. The current application does not seek any identical relief to the January 17, 2006 application. The buildings involved in the 2006 application have been demolished. The buildings involved in the application are different, do not pose any imminent threat to public health and safety and are only being demolished to facilitate the construction of the project.

15. No previous application for the relief herein prayed for has been made. Wherefore, your deponent respectfully asks for an order granting the preliminary injunction motion.

  
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JEFFREY S. BAKER

Sworn to before me  
4th day of April, 2007

  
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Notary Public

CHRISTINE CUSHINE  
Notary Public, State of New York  
Qualified in Albany County  
No. 01CU6070965  
Commission Expires March 11, 20 10