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

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DANIEL GOLDSTEIN, PETER WILLIAMS ENTERPRISES, INC., 535 CARLTON AVE. REALTY CORP., PACIFIC CARLTON DEVELOPMENT CORP., THE GELIN GROUP, LLC, CHADDERTON'S BAR AND GRILL INC., d/b/a FREDDY'S BAR AND BACKROOM, MARIA GONZALEZ, JACKIE GONZALEZ, YESENIA GONZALEZ, and DAVID SHEETS,

Petitioners,

- against -

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION,

Respondent.

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No. 2008-7064

NOTICE
OF PETITION

PLEASE TAKE NOTICE, that pursuant to Section 670.18 of the Rules of the Appellate Division Second Department and upon the annexed EDPL § 207 Petition, the record that will be filed by Respondent, and the briefs in support of the Petition, and all of the papers and proceedings herein, Petitioners will move this Court, at 45 Monroe Place, Brooklyn, New York, for an order:

1. Granting judgment, pursuant to Section 207 of the New York State Eminent Domain Procedure Law, annulling and rejecting the Determination and Findings made by Respondent on December 8, 2006 (attached hereto as Ex. A); and

2. Granting such other and further relief as this court may find just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Appellate Division Second Department Rule 670.18(b), Respondent must file an answer to the Petition and the transcript or record of the determination and findings (*see* Demand attached hereto as Ex. B).

PLEASE TAKE FUTHER NOTICE, that pursuant to Appellate Division Second Department Rule 670.18(c), within three months after service of Respondent's Answer, Petitioners shall file their brief in support of this Petition, and not more than 30 days later, respondent shall file nine copies of an answering brief with proof of service of one copy upon petitioners, and not more than 10 days thereafter, Petitioners shall file a reply brief.

Dated: August 1, 2008
New York, New York

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No. 2008-7064

EDPL § 207
PETITION

Petitioners, by their attorneys, upon knowledge as to themselves and otherwise upon information and belief, allege as follows:

PRELIMINARY STATEMENT

1. This petition, brought pursuant to N.Y. Em. Dom. Proc. Law ("EDPL") § 207, seeks an order rejecting the Determination and Findings ("Determination") issued by respondent Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") on December 8, 2006 (attached hereto as Ex. A). The Determination constitutes ESDC's formal decision to forcibly seize petitioners' homes and businesses pursuant to EDPL § 204.

2. ESDC's Determination should be rejected because it violates: the public use clause contained in the Bill of Rights of the New York Constitution (Art. 1, § 7(a)); the due process clause contained in the Bill of Rights of the New York Constitution (Art. 1, § 6); the

equal protection clause contained in the Bill of Rights of the New York Constitution (Art. 1, § 11); the low-income and current resident requirements of the New York Constitution (Art. 18, § 6); and the "public use, benefit or purpose" requirement contained in EDPL § 207(C)(4).

3. This is a case about the misuse of government's power to take property by eminent domain and the betrayal of public trust in service of the interests of a private developer. At the behest of developer Bruce Ratner and former Governor George Pataki, respondent ESDC agreed to allow Ratner and his companies to build the largest single-source, multi-use real estate development in the history of the City of New York in the heart of Central Brooklyn (the "Project").[1] This deal was struck behind closed doors; without first creating a comprehensive development plan or so much as considering a single alternative to Ratner's plan for development of the area; without a bidding or competitive selection process of any kind for the Project as a whole, including the privilege of being given Petitioners' homes and businesses after they are seized by ESDC; without a true competitive process for the property owned by the Metropolitan Transit Authority; and without a process to allow for meaningful community input. The Project contemplates that ESDC will seize over 120 tax lots of private property – including Petitioners' properties – for the benefit of the private developer who conceived this scheme, selected the properties for seizure, and whose interest is to maximize his company's profits.

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[1] The Project is known as the Atlantic Yards Arena and Redevelopment Project (the "Project"). As proposed and approved by ESDC, the Project is a publicly subsidized, mixed-use redevelopment project that would cover 22 acres of land in and around the Metropolitan Transportation Authority's ("MTA") Vanderbilt Yards, including the active rail yard, bus depot, city streets, two city properties and 68 other privately owned parcels totaling 123 tax lots. It includes a sports arena accommodating up to 20,500 persons; 16 high-rise apartment and office towers – ranging from approximately 18 to 60 stories – and containing 8.8 million square feet of residential, office and commercial space; and a 180-room hotel. The proposed project extends over 22 acres and is comprised of 6,430housing units and approximately 600,000 square feet of office space. At least 4,180 of the housing units would be market rate.

4. The exercise of eminent domain to seize Petitioners' homes and businesses not only violates the EDPL; it is unnecessary. Large-scale development in this section of Brooklyn can be done successfully and profitably without taking a single piece of privately owned land. ESDC's decision to take Petitioners' properties serves only one purpose: to allow Ratner to build a Project of unprecedented size (adjacent to property he already owns), and thus to reap a profit that ESDC never bothered to even consider. This is not merely favoritism of a particular developer in the classic sense – although it is that; here, the "favored" developer drove and dictated the process, with the government through former Governor Pataki, who wholly controlled the ESDC when its Determination was made, obediently falling into line.

5. The New York State Constitution and the EDPL permit the seizure of private property through the power of eminent domain *only* if the taking is for public use. The taking of Petitioners' properties here violates that stricture because the Project itself was conceived by Ratner, and is being driven by his needs, motives, and vision, not those of the public at large. Far from emerging from a legitimate democratic process where the public interest is identified and articulated by its elected representatives, and the community at-large through mechanisms such as the City Charter-mandated Uniform Land Use Review Process, here the Project is the product of a developer's dream – and a conscious effort to bypass City procedures mandating meaningful local review, planning, democratic oversight and community input.

6. Far from an open democratic process, the "review" and approval for this mammoth Project has been solely the province of the ESDC; *public* input and review has been a sham.

7. Only this Court can prevent Ratner and the ESDC from wielding the power of eminent domain to seize Petitioners' homes and businesses. The Petition should be granted.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to the EDPL § 207 and venue is properly placed in this Court pursuant to the same statute.

9. This Petition is timely because it, along with a demand to file the record, was originally filed on January 5, 2007, less than 30 days after the Determination (EDPL § 207(A)), as a supplemental claim in Petitioners' federal court action, *Goldstein, et al. v. Pataki, et al.*, No. 06-CV-5827 (E.D.N.Y.). Petitioners' supplemental state law claims under EDPL § 207 were later dismissed without prejudice on February 1, 2008, *see Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. 2008). Petitioners' petition to the Supreme Court of the United States seeking a writ of certiorari was denied over the objection of Justice Alito on June 23, 2008. This action pursuant to EDPL § 207 is based upon the same transaction or occurrence as the original action pursuant to EDPL § 207 and has been filed "within six months" after the termination of those claims without prejudice. CPLR 205(a).

PARTIES

10. Petitioner Daniel Goldstein owns a condominium apartment located at 636 Pacific Street where he resides with his wife Shabnam Merchant. Mr. Goldstein has owned and lived in the apartment since 2003 when the building opened to residents. Absent relief from this Court, title to Mr. Goldstein's condominium will be seized by ESDC and transferred to Ratner.

11. Petitioner The Gelin Group LLC ("Gelin"), is a New York limited liability company that owns a one family residence located at 491 Dean Street. John Gelin and his wife

reside in the property which they recently renovated. Absent relief from this Court, title to the property will be seized by ESDC and transferred to Ratner.

12. Petitioner Chadderton's Bar and Grill Inc. d/b/a Freddy's Bar and Backroom ("Freddy's"), is a New York corporation owns a seven-year commercial lease for the property located at 483-4855 Dean Street. The President of Freddy's is Frank Yost. Mr. Yost has owned the business for twelve years. Freddy's (which dates back to the pre-prohibition era) was selected as one of Esquire Magazines Best Bars in America. Absent relief from this Court, Freddy's will be stripped of its property rights so that Ratner can maximize his profit.

13. Petitioner Peter Williams Enterprises, Inc. ("Williams") is a New York corporation that owns the house located at 38 6th Avenue and an easement preventing building outside of the current zoning envelope of the abutting property, 24 6th Avenue. Absent relief from this Court, title to 38 6th Avenue will be seized by ESDC and transferred to Ratner.

14. Petitioner 535 Carleton Ave. Realty Corp. ("535 Carleton") is a New York corporation. 535 Carleton owns properties located at 547 Carlton Avenue (Block 1129, Lot 4) and at 533-543 Carlton Avenue (Block 1129, Lots 5 and Lot 6). Absent relief from this Court, title to these properties will be seized by ESDC and transferred to Ratner.

15. Petitioner Pacific Carlton Development Corp. ("Pacific") is a New York corporation. Pacific owns property located at 740-766 Pacific St. (Block 1129, Lot 13). Absent relief from this Court, title to this property will be seized by ESDC and transferred to Ratner.

16. Petitioner Maria Gonzalez is a rent-stabilized tenant who lives at 812 Pacific Street, Apartment 1L, Brooklyn, NY 11217 together with her husband and son. She has lived in the building for the past 34 years and Mr. Gonzalez has acted as the superintendent for the same number of years. Ms. Gonzalez and her husband currently hold an unexpired

rent-stabilized lease which, but for the use of eminent domain, would be renewable upon its expiration in November 2008.

17. Petitioner Jackie Gonzalez is a rent-stabilized tenant who lives at 812 Pacific Street, Apartment 3L, Brooklyn, NY 11217 together with her spouse and two minor children, aged four and seven years old. She has lived in the building for the past four years.

18. Petitioner Yesenia Gonzalez is a rent-stabilized tenant who lives at 812 Pacific Street, Apartment 4L, Brooklyn, NY 11217 together with her eleven year old son. She has lived in the building for the past seven years.

19. Petitioner David Sheets is a rent-stabilized tenant who has lived at 479 Dean Street, Apartment 1, Brooklyn, NY 11217 for the past ten years. Mr. Sheets's building was purchased in May 2006 by a Ratner entity the "Atlantic Yards Development Sub A, LLC." The building at 479 Dean Street is subject to so-called "friendly taking" through a transfer of the property from Ratner to the state ESDC which would result in the displacement of all the building's currently rent-stabilized tenants.

20. Respondent New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") is a corporate governmental agency of the State, constituting a political subdivision and public benefit corporation. ESDC is wholly controlled by the Governor. It consists of nine directors. The Superintendent of Banks serves as a director as does the Chairman of the New York State Science and Technology Foundation. The remaining seven directors are appointed by the Governor as is the Chairman. It has its principal place of business at 633 Third Ave., New York, New York.

FACTS

21. The Project as approved by ESDC consists of 16 towers, ranging from approximately eighteen stories to sixty stories, and a sports arena. The Project contained 8.6 million square feet, with 6,430 residential units and approximately 600,000 square feet of office space. The Project covers approximately twenty-two acres which is currently comprised of the MTA's 8.5-acre active rail yard and bus depot, city streets, two city properties and sixty-eight privately-owned parcels totaling 123 tax lots.

22. The site of the Project – bounded generally by Atlantic Avenue to the North, Dean Street to the South, Fourth Avenue to the West, and Vanderbilt Avenue to the East – was not designated for economic development by any government body. It was not chosen for redevelopment by the City of New York; it was not chosen by ESDC. The site was selected by Ratner.

A. The Project's Inception

23. Ratner is not new to Brooklyn. Over the past 15 years, Ratner has developed two major commercial sites in downtown Brooklyn – the Metrotech Center, where most of Ratner's companies are headquartered and the Atlantic Terminal Mall and Atlantic Center Mall (in which the ESDC was a tenant paying market rate rent to Ratner) which are directly adjacent to the proposed project site.

24. Directly south of the Atlantic Terminal Mall is an area which Ratner has been interested in developing for residential and commercial use for many years.

25. By no later than the summer of 2002, Ratner had developed plans for the Project – plans which centered on several huge commercial and residential buildings and an indoor sports arena.

26. On December 11, 2003, Ratner announced the then $2.5 billion "Atlantic Yards" development project, which at that point contemplated sixteen towers, 2.1 million square feet of commercial space and 4,500 residential units.

B. The "Takings Area"

27. The proposed footprint for the Project is comprised of two separate sections: one where the land is owned principally by the Metropolitan Transit Authority ("MTA") and the other where it is held principally by private parties. Nearly half of the Project site's acreage is comprised of a portion of the Atlantic Terminal Urban Renewal Area ("ATURA") designated by New York City in 1968, which contains the MTA Vanderbilt rail yards, and two smaller blocks, one of which was owned or controlled by Ratner prior to the advent of the Project. The remainder of the footprint is privately held land – mostly residential and commercial buildings, some seventy parcels in all. It is this second area where ESDC and Ratner will resort to taking Petitioners' properties by eminent domain (the "Takings Area").

28. The Takings Area consists primarily of two large, non-contiguous, rectangularly shaped parcels situated directly south of the rail yards, and include a portion of a third block. These two parcels, containing petitioners' homes and businesses, are separated by an equally large rectangular parcel owned in substantial part by a developer who, early on, appears to have cut a deal with Ratner to spare his property from condemnation. Petitioners were less fortunate.

29. The Takings Area, where each of the Petitioners' properties is located, is not part of the ATURA and has never been.

30. The Takings Area was never designated or targeted for redevelopment by the any governmental authority prior to the Project announcement in December 2003.

31. The Takings Area was not declared "blighted" until 2006, immediately prior to the sham public hearings on the Project conducted by Ratner and the ESDC.

32. Indeed, far from being "blighted," the Takings Area rests smack in the middle of some of the most valuable real estate in Brooklyn. In the decade preceding the unveiling of the Project, most of the Takings Area was re-zoned, permitting adaptive reuse of existing manufacturing buildings, and luxury condominiums were being built in and around the Project's footprint. Since then, and until Ratner announced the Project and began buying up and warehousing buildings in the area, the neighborhood was flourishing, attracting all manner of City dwellers and commercial enterprises to the townhouses and low rise industrial buildings typical of the area.

33. Nearly three years after the Project was announced, ESDC and Ratner self-servingly contended for the first time that the Takings Area was "blighted" and in need of redevelopment. If there is stagnation in any part of the Takings Area, it is the result of the Project itself: following the Project's announcement in 2003, Ratner, using the threat of eminent domain, has aggressively purchased property in the Takings Area, cleared out buildings, and left them empty while moving forward with the Project and the condemnation of Petitioners' properties.

34. In its fervor to purchase as much property as possible within the Takings Area, Ratner has repeatedly warned reluctant property owners that they only have two choices – sell to Ratner or wait until ESDC takes their property by eminent domain and then gives it to Ratner.

35. The threatened and actual seizure of Petitioners' properties in the Takings Area is a transparent effort to co-opt the government's power of eminent domain in order to expand a private development and maximize the profits it generates.

36. The ATURA could easily be redeveloped without involving the Takings Area; and a large mixed-use residential and commercial complex could be built without taking a single piece of private property by eminent domain.

37. Respondent's contention that this is an "economic development project" and that the seizure of land in the Takings Area is necessary and crucial to further that purpose is false.

C. The "Role" of Local Government

38. The New York City Council is *the* elected local legislative body of the City of New York; its fifty-one members, separately and as a group, are the voice of the people in this City. The City Council sets all zoning and land-use rules and regulations.

39. New York City's fifty-nine Community Boards provide a forum for the voices of ordinary people to be heard at the neighborhood level whenever major land use questions arise under the Uniform Land Use Review Procedure ("ULURP") of the City Charter.

40. For this Project, however – the largest single-source development in City history – neither the City Council, nor the Department of City Planning, nor the three affected Community Boards had any meaningful voice. By executive fiat, at both the state and local levels, these processes have been bypassed.

41. In December 2003, it was announced that the Project would be developed by Ratner in concert with ESDC, and would thus bypass City review altogether, including ULURP which culminates with a vote by the New York City Council.

42. The decision to designate ESDC as the sponsor of the Project allowed Ratner to bypass the normal City land use approval process and to ignore the limitations of the City zoning code. Ratner could thereby construct a project many times exceeding the size permitted in the zoning code – without rezoning – and to include uses, such as the arena in proximity to residences that would otherwise not be permitted. A complete zoning override, tailored to Ratner's specifications, was granted.

43. On or about February 18, 2005, much of the agreement was memorialized in a Memorandum of Understanding ("MOU") between the ESDC, the City and Ratner, including the plan to bypass all meaningful local community review of the project by designating ESDC as the lead agency.

44. On the same day, a second MOU was executed by the same parties. The second MOU was withheld from the public until approximately six months later when it was produced in response to a Freedom of Information Law request.

45. Both MOUs contained economic benefits to Ratner that are atypical. Under the first MOU, Ratner received a raft of special discretionary benefits not available as-of-right to real estate developers, including $200 million in capital contributions from the City and State (which has since been increased to $305 million with no limit to how high it may go), low-cost tax-exempt financing for the arena, extra property tax savings, a low-cost lease, and the guaranteed transfer of private property through eminent domain. The second MOU secured for Ratner a virtually unfettered right to develop certain parcels in the ATURA, including areas *outside the Project,* without interference by the City.

46. ESDC did not so much as consider the possibility of selecting the developer through a competitive selection process, which would have in turn protected the public

fisc. Instead, from the start this Project and the Project site has been earmarked solely for Ratner and no one else because it was his *idea*.

47. Indeed, Winston Von Engel, the Deputy Director of the Department of City Planning's Brooklyn Office testified on March 16, 2006 that the City had not been considering redeveloping the area because the rail yards "belong to the Long Island Rail Road. They use them heavily. They're critical to their operations. . . . Ratner owns property across the way. And [he] saw the yards, and looked at those. We had not been considering the yards directly."

48. When asked about the genesis of the Project on May 4, 2004, Andrew Alper, then the president of the New York City Economic Development Corporation, testified:

> This particular project came to us. We were not out soliciting, we were developing a Downtown Brooklyn Plan, but we were not out soliciting a professional sports franchise for Downtown Brooklyn. The developer came to us with what we thought was actually a very clever plan. It is not only bringing a sports team back to Brooklyn, but to do it in a way that provided dramatic economic development catalyst in terms of housing, retail, commercial jobs, construction jobs, permanent jobs. So, they came to us, we did not come to them. And it is not really up to us then to go out and try to find a better deal.

D. The Sham Bid Process for the Railyards

49. In order for the Project to move ahead, Ratner had to secure from the MTA the right to develop the Vanderbilt Rail Yard properties (which are located within the ATURA and used by the Long Island Railroad). This was never a significant obstacle.

50. The chief spokesperson for the MTA told reporters, on two separate occasions in 2004, that the rail yards, which accounted for just under 40% of Ratner's site, had already been conveyed to Ratner in a private deal.

51. Later, in May 2005, the MTA retracted those statements, and announced a "competitive" selection process. The MTA's request for proposals ("RFP") to purchase and develop the rail yards was a sham. The time allotted for responses was a mere 42 days. This was a significant advantage for Ratner, who, unlike others, had devised his mammoth Project years earlier and had been in planning discussions with the MTA all along.

52. Even though the deadline was short, a well-respected developer, Extell, Development Company, submitted a proposal to purchase the rail yards for $150 million. The Extell proposal was limited to the rail yards themselves. It did not require, nor contemplate, condemning nearby homes and businesses. It was a dense project that did not require wholesale zoning overrides, was subject to City Council approval, and was expected to create jobs, affordable housing, open space, a new rail yard, and tax revenues. Extell's proposal fully complied with the RFP, including the requirement that all submissions include a twenty-year profit and loss projection.

53. Ratner offered $50 million for the rail yards. MTA's own appraised value of the rail yards was $214.5 million. Ratner's offer was contingent upon condemning petitioners' properties (which had nothing to do with the property owned by the MTA and put up for bid) and bypassing local zoning and city council review laws. Ratner refused to provide the RFP's requisite profit projection.

54. Ratner's non-compliant, non-responsive proposal for $50 million, which was later increased to $100 million, was accepted by the MTA. Extell's compliant proposal for $150 million was rejected.

55. The MTA's July 2007 request for proposals to develop the Hudson rail yards in Manhattan ("Hudson RFP") stands in sharp contrast to the MTA's May 2005 RFP for

Ratner ("Ratner RFP"). Unlike the Ratner RFP, the MTA and the City, including the City Council and local community boards, engaged in an extensive planning process culminating in a comprehensive development plan for the area before soliciting bids from developers. The Ratner RFP was only forty-two pages long. It provided little guidance to developers interested in the property. It did not present a comprehensive or detailed vision for the future of the site. Responses were due no later than forty-two days after its release. The Hudson RFP was 1,369 pages long. It was comprehensive, detailed, and contained hundreds of pages of design guidelines, thus ensuring that the pre-determined needs of the public would be met. There was a ninety-two day window from RFP publication to the deadline for submitting responses. *See* Hudson RFP, *available at* http://www.mtawsy.com/en-US/.

E. The Patina of Public Participation

56. On or about July 24, 2006, ESDC issued a Notice of Public Hearing. The hearing was scheduled thirty days later (the minimum allowed under state law) on August 23, 2006. Respondent attempted to curb the number of persons who would attend and object to the Project by setting the notice period and the hearing date during a time of year when many New Yorkers are away for summer vacation and the local community boards are in recess.

57. The hearing was held, as scheduled, on August 23, 2006. Many people wishing to attend could not get in and most wishing to speak were not allowed to do so. Many property owners who came in response to the public notice were not allowed to testify orally.

58. Respondent also scheduled a community forum for September 12, 2006. Focused again on avoiding opposition, Respondent picked the one date for the forum when people who are involved in politics and oppose the Project would likely be consumed by other matters – Primary Election Day.

59. The final deadline for public comment on the Project's General Project Plan and Draft Environmental Impact Statement was September 29, 2006.

60. On December 8, 2006, the ESDC issued the Determination challenged in this action, specifically that the Project will serve a "public use, benefit or purpose." EDPL § 204(B)(1).

F. ESDC's Public Use Determination Is A Pretext

61. ESDC's Determination claims that the "principal public use, benefit and purpose of the Project is to eliminate the blighted conditions of the Project site and the blighting influence of the below-grade Yard." Ex. A at 4.

62. Secondarily, the ESDC's Determination also claims that the Project will provide: (i) an arena, (ii) 2,250 units of affordable housing and between 3,075 and 4,180 market rate units, (iii) between 336,000 and 1,606,000 million square feet of office space and possibly a hotel; (iv) 8 acres of publicly accessible open space, (v) new retail space, (vi) community facility spaces, (vii) rail storage and inspection facility for the LIRR, (viii) a subway entrance and connection, (ix) green design and (x) environmental remediation. The ESDC's Determination also claims that the Project will provide economic benefits in the form of jobs and tax revenues. *Id.* at 5-6.

1. ESDC's Principle Pretext: The Elimination of Blight

63. Respondent assert that the taking of Petitioners properties is necessary to eliminate "blight" in the Takings Area. This assertion is a classic *post-hoc* justification – a pretext with no basis in fact.

64. At the time the the Project was officially announced in December 2003, the public benefit touted as justification was was economic development, including the alleged

creation of jobs and the specter of a professional basketball team moving from New Jersey to Brooklyn. Neither the alleged existence of blight nor its remediation was ever mentioned.

65. Following the Project's announcement, Ratner, using the threat of eminent domain, aggressively purchased property in the Takings Area, cleared out buildings, and left them empty. Petitioners, whose homes and businesses occupy approximately 20% of the Takings Area, resisted.

66. The first mention of blight by respondents occurred two years after the Project was first announced and after Ratner had acquired numerous properties in the Takings Area and let them lie fallow. In late 2005, the ESDC retained a consultant, AKRF, to conduct a "blight study."

67. The sole objective of the study was to justify Ratner's property selection. Rather than a review of Ratner's site and its environs, the study examined exclusively the properties Ratner had selected for acquisition years before. Not a speck of land bordering the irregularly shaped Project site was evaluated for blight.

68. AKRF was paid by Ratner. Without exception, every study ever conducted by AKRF has been pro-development. AKRF did not disappoint. In a report issued almost three years after the Project was publicly unveiled, AKRF concluded that about 50% of the Takings Area was characterized by blight. For many of the properties included in the "blighted" 50% of the Takings Area, the sole blighting condition was "underutilization," meaning the owners of those properties had elected not to build to more than 60% of the maximum square footage allowed by law. Others had "graffiti."

69. Petitioners' homes and businesses are not blighted. The Takings Area is not blighted.

2. ESDC's Other Pretexts

70. The arena for Ratner's professional basketball team is no more a public benefit than the possibility of a hotel. Both, like countless other consumer oriented businesses, will be accessible to the public – for a price. When first announced, the City of New York agreed to contribute $100 million. Based on that figure, the Independent Budget Office of New York City (IBO) initially concluded that the professional basketball arena would generate – at best – less than $1 million per year in new tax revenue for the City over thirty years. Later, the City committed an additional $105 million to Ratner.[2] Thus, under the best case, the arena will be a $70 million loss to the City.

71. The Project will not create affordable housing. Ratner recently conceded that, while he was confident about starting construction on the arena for his basketball team, the residential construction "could be put off for years." *See* "Slow Economy Likely to Stall Atlantic Yards," N.Y. Times, Mar. 21, 2008, at A1. Affordable housing funds are scarce and may no longer be available, and there is no established timeline for the affordable housing phase of the Project. *Id.* The promise of affordable housing will never be realized. It is a stalking horse for luxury condominiums and an arena for Ratner's basketball team.

72. ESDC's own study concluded that, in their study area, the Project could indirectly eliminate 2,929 at-risk households (defined as "privately held units that are unprotected by rent regulations, whose incomes or poverty status indicates that they could not pay substantial rent increases"). Thus, nearly 3000 low-income households will be displaced in

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[2] Eliot Brown, *Bloomberg Budget Doubles Subsidy for Atlantic Yards*, N.Y. SUN, Jan. 30, 2007, *available at* http://www.nysun.com/article/47664.

exchange for the ever-dwindling possibility that the Project *might* create 2,250 "affordable" units—a net affordable housing loss.

3. Benefit To Ratner

73. No true analysis of the public use, benefit and purpose of the Project can be made without scrutinizing the benefit to Ratner. Yet, ESDC did virtually nothing to determine what this might be. This fact alone merits a rejection of the Determination.

74. Ratner will receive special discretionary perks, including without limitation a minimum of $305 million in capital contributions from the City and State, zoning overrides, a government blank check eliminating the risk of "extraordinary infrastructure costs," low-cost and tax-exempt financing for the arena, housing, property, and mortgage tax exemptions, City land conveyed for one dollar, and the guaranteed transfer of petitioners' properties.

75. Ratner will profit enormously from the Project. The magnitude of that profit is not known, however, because Ratner has refused to disclose this data publicly.[3] Ratner's profit from the Project has been conservatively estimated at one billion dollars.

H. Friendly Takings

76. In addition to the hostile seizure of Petitioners' properties, Respondent will also execute a number of friendly takings. The friendly takings consist of Respondent acquiring, without objection, title to Ratner's own properties, presumably after paying just compensation.

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[3] Ratner refused to disclose his profit projections even to the ESDC. Eliot Brown, *State Never Saw Business Plan For Atlantic Yards Project*, N.Y. SUN, Mar. 28, 2007, *available at* http://www.nysun.com/article/51354.

77. As it happens, however, these Ratner properties have tenants, like the residential tenant Petitioners in this action, that are protected from eviction without cause by State rent laws.

78. Absent the scheme to take Ratner's property through condemnation, Ratner would be unable to demolish its buildings and evict these tenants without first providing relocation and compensation under the Emergency Tenant Protection Regulations ("TPR") and the Rent Stabilization Code ("RSC"). *See* TPR §2504.4(f) and RSC §2524.5(a)(2).

79. Without a friendly taking, landlords who are demolishing rent-stabilized buildings must obtain approval from the State Division of Housing and Community Renewal and must either offer replacement housing at the same rent, a stipend to cover the anticipated difference in rents for a six year period, or some combination of those two options. *See* 9 N.Y.C.R.R. § 2524.5(2).

80. Thus, in one fell swoop, the friendly taking will allow Ratner (1) to avoid the rent laws and their "onerous" relocation requirements, (2) to evict all tenants without any cause or justification, and (3) to line its pockets with additional funds from the public fisc.

FIRST CLAIM
(EDPL § 207(C) (1), N.Y. State Const. Art. 1, § 7(a))

81. Petitioners repeat and reallege the preceding paragraphs as if fully set forth at length herein.

82. Article 1, section 7(a) of the New York State Constitution prohibits the government from taking private property unless the taking is for a "public use."

83. By taking Petitioners' property and giving it to Ratner, Respondent intends to benefit Ratner.

84. Ratner is the primary beneficiary of the taking of Petitioners' properties.

85. The public does not benefit from the taking of Petitioners' properties.

86. Alternatively, insofar as the public derives any benefit from the taking of Petitioners' properties, it is secondary and incidental to the benefit that inures to Ratner.

87. Repsondent's desire to confer a private benefit to Ratner was a substantial, motivating factor, in Respondent's decision to seize Petitioners' property and transfer it to Ratner.

88. As set forth above, among other indicia that the taking of Petitioners' properties is being done to benefit Ratner, without limitation, are:

(A) the Project and the Project site was wholly conceived by Ratner;

(B) absent Ratner's persistence in pursuing the Project, there would be no development at the site that would require or demand the condemnation of Petitioner's property;

©) not a single alternative plan (much less multiple plans) was considered before the determination to proceed with the Project;

(D) not a single alternative private developer (much less multiple developers) was considered before the determination to proceed with Ratner;

(E) the beneficiary of the land transfer by eminent domain was known long before the determination to proceed;

(F) there was no meaningful community or local input before (or even after) the decision to proceed;

(G) the Project is not the product of a carefully considered development plan;

(H) the environmental impact of the Project was not studied before the determination to proceed;

(I) the social ramifications of the Project were not considered before the determination to proceed;

(J) there was no independent consultant or team of consultants who evaluated the Project before the determination to proceed;

(K) there was no finding that the Project was consistent with the overall development goals of the City and State before the determination to proceed;

(L) there was no finding that the area to be condemned was blighted before the determination to proceed;

(M) New York City is not struggling to rebound from an economic depression;

(N) Brooklyn is not struggling to rebound from an economic depression;

(O) the substantial public financing and incentives provided for the program were not put in place *before* the developer was known and were *only* promised to Ratner;

(P) the economic benefits, if any, to be realized from the Project are *de minimus*; and

(Q) many of the procedural protections in place to prevent development without local and community input and approval were bypassed.

89. Respondent's claims of public benefit are a pretext to justify a private taking.

90. As set forth above, among other indicia that Respondent's claims of public benefit are a pretext, without limitation, are:

(A) the Takings Area is not blighted;

(B) the Project will not generate a net economic benefit for the community or the City;

(C) the Project will not increase available affordable housing; and

(D) the Project will not actually create more jobs.

SECOND CLAIM
(EDPL § 207(C) (1), N.Y. State Const. Art. 1, § 11)

91. Petitioners repeat and reallege the preceding paragraphs as if fully set forth at length herein.

92. Article 1, section 11, of the New York State Constitution prohibits the government, and those acting in concert with the government, from subjecting an individual to adverse or differential treatment without a rational basis.

93. By selecting Petitioners' properties to be taken for the purpose of conferring a benefit, here the Petitioners' property, to Ratner, Respondent has targeted Petitioners for adverse treatment for no rational purpose.

94. Indeed, it would have been far more rational to have selected properties that were in a contiguous regular shape south of the rail yards, rather than two parcels separated by nearly a full block. Ratner's (and ultimately the ESDC's) decision to spare the property of persons with more power and clout than Petitioners is not rational.

95. Conferring a benefit upon Ratner under the circumstances detailed above is not rational.

96. Elevating the status of one citizen or group of citizens, here Ratner, by mistreating Petitioners is also prohibited by the Equal Protection Clause.

97. By singling out Petitioners, for unequal, adverse, treatment, and selecting Ratner as the recipient of irrational largess, Respondent violated Petitioners' right to equal protection under the law.

THIRD CLAIM
(EDPL § 207(C) (1), N.Y. State Const. Art. 1, § 6)

98. Petitioner repeats and realleges the preceding paragraphs as if fully set forth at length herein.

99. At all times relevant hereto, Petitioners had a valuable property interest in their real property, condominium, commercial lease or status as rent stabilized tenants.

100. By engaging in the scheme set forth above, including without limitation, by: (1) circumventing local and community review and local zoning regulations; (2) failing to provide sufficient time to meaningfully respond between the release of the Draft Environmental Impact Statement and the hearing on August 23, 2006; (3) failing to provide a hearing that allowed Petitioners to meaningfully state their objections; and (4) at all times providing an empty, meaningless, process, with a pre-determined outcome – Respondent impermissibly denied Petitioners of their property interest without due process of law and conspired among themselves to do so (taking numerous steps in furtherance thereof), or failed to prevent others from doing so.

FOURTH CLAIM
(EDPL § 207(C) (1), N.Y. State Const. Art. 18, § 6)

101. Petitioners repeat and reallege the preceding paragraphs as if fully set forth at length herein.

102. Article 18, section 6, of the New York State Constitution provides that no loan or subsidy shall be made to aid any project unless the project contains a plan for the remediation of blight and the "occupancy of any such project shall be restricted to persons of low income as defined by law and preference shall be given to persons who live or shall have lived in such area or areas."

103. As detailed above, Respondent has violated Art. 18, § 6 because, *inter alia*, the Project is not "restricted to persons of low income" and no preference has been given to "persons who live or shall have lived in such area."

FIFTH CLAIM
(EDPL § 207(C) (4))

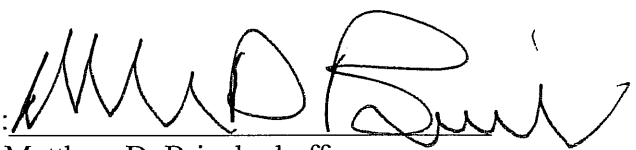
104. Petitioners repeat and reallege the preceding paragraphs as if fully set forth at length herein.

105. For all the reasons detailed in this Petition, Respondent's Determination that the seizure of Petitioners' homes and businesses will serve a "public use, benefit or purpose" has no basis in fact or law.

WHEREFORE, Petitioners respectfully request a judgment rejecting and annulling Resondent ESDC's Determination and Findings dated December 8, 2006 and awarding Petitioners' reasonable costs and attorneys' fees pursuant to CPLR 8600.

Dated: August 1, 2008
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: 
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