

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

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In the Matter of	:	Index No. 102621/07
	:	(Madden, J.)
	:	
DEVELOP DON'T DESTROY BROOKLYN, INC., et al.	:	<b>AFFIRMATION OF</b>
	:	<b>PHILIP E. KARMEL</b>
Petitioners-Plaintiffs	:	<b>IN OPPOSITION TO</b>
	:	<b>THE APPLICATION</b>
For a Judgment Pursuant to Article 78 of the CPLR and	:	<b>FOR A TEMPORARY</b>
Declaratory Judgment	:	<b>RESTRAINING ORDER</b>
	:	
– against –	:	
	:	
URBAN DEVELOPMENT CORPORATION d/b/a	:	
EMPIRE STATE DEVELOPMENT CORPORATION,	:	
et al.	:	
	:	
Respondents-Defendants.	:	

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PHILIP E. KARMEL, an attorney admitted to the practice of law in the State of New York, hereby affirms and declares under the penalty of perjury:

1. I am a member of Bryan Cave LLP, attorneys for respondent-defendant New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”). I am fully familiar with all the proceedings heretofore had herein and the facts hereinafter recited. I respectfully submit this affirmation in opposition to the application of petitioners-plaintiffs (“petitioners”) for a temporary restraining order to stop the demolition of certain vacant buildings at the project site (the “TRO Application”).

2. In light of the limited time available to respond to the TRO Application, it is not possible to prepare plenary papers addressing the claims presented in this litigation. ESDC’s opposition papers to petitioners’ Article 78 petition and motion

for a preliminary injunction are being prepared in conformance with the schedule set by the Court and will be served on April 25, with a courtesy copy to the Court as previously requested. ESDC's papers will demonstrate that petitioners' claims should be dismissed.

3. Petitioners have not established that they would be irreparably harmed by the limited demolition work that is expected to occur over the next several weeks, prior to the return date on their motion for a preliminary injunction. The buildings at issue – which represent a small fraction of the buildings in the project site – are currently vacant. Petitioners have not demonstrated that they would suffer any legally cognizable harm from living next to a vacant lot rather than a vacant building. Although their Article 78 petition claims that petitioners will suffer injury from the Atlantic Yards Land Use Improvement and Civic Project (the “Project”), petitioners have not articulated any convincing reason why they would suffer any legally cognizable injury – irreparable or otherwise – by the limited demolition work at issue in their TRO Application.

4. Nor have petitioners demonstrated that the balance of equities weighs in their favor. They waited four months to file this proceeding and now seek extraordinary relief prior to proper briefing. Demolition of vacant buildings is a routine activity. There is no equitable reason why the property owner of the affected buildings should not be permitted to proceed with the limited demolition work at issue. Far from preserving the status quo, the TRO sought by petitioners would change the status quo by interrupting the work taking place at the project site.

5. In approving the Project on December 8, 2006, ESDC determined that its implementation would achieve significant public purposes which are discussed in very considerable detail in ESDC's approval documents. Petitioners' assertion that the

public will not be harmed by any delay in the Project is self-serving and inconsistent with the contrary determination that ESDC made in approving the Project.

WHEREFORE, ESDC respectfully requests that the TRO Application be denied and that it be granted such further and additional relief as the Court may deem just and equitable.

Dated: New York, New York  
April 17, 2007

A handwritten signature in cursive script, appearing to read "Philip E. Karmel", written in dark ink.

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PHILIP E. KARMEL