

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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In the Matter of

Index No. 104597/07
(Madden, J.)

DEVELOP DON'T DESTROY BROOKLYN, INC.,
et al.,

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, et al.

Respondents-Defendants
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**PETITIONERS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION**

Petitioners hereby reply to the answering papers of respondents New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"), Forest City Ratner Companies, LLC ("FCRC"), Metropolitan Transportation Authority ("MTA"), and New York State Public Authorities Control Board ("PACB"), with respect to petitioners' motion for a preliminary injunction to enjoin FCRC and its affiliates from proceeding with the demolition of buildings in the portion of the site of the Atlantic Yards Arena and Redevelopment Project (the "Project") comprised by Blocks 1127, 1128, and 1129.

The grounds on which petitioners seek preliminary injunctive relief are set forth in petitioners initial moving papers. Petitioners reply herein regarding only a few discreet issues.

ARGUMENT

At this Court's hearing of petitioners' application for a Temporary Restraining Order on April 17, 2007, the risk of irreparable harm to petitioners related only to approximately eight buildings. Now, the risk of harm is substantially greater, as it involves demolition of nearly the entire area at issue, except for the specific properties owned or resided in by the various plaintiffs in other pending litigation involving the Project.

As the Court is aware, the Department of Buildings has temporarily stayed FCRC's demolitions on the Project site until it determines the reasons for the partial collapse of the Ward Bakery building on Block 1129 on April 26, 2007, while FCRC contractors were performing abatement work in the building. We note that the building was inspected by DOB last year, which at that time found no risk of collapse or other threat to public safety.

The collapse compelled the evacuation of approximately 94 families – about 350 people – residing in a shelter facility next door to the building, who were later allowed to return. *See* Affidavit of Daniel Goldstein sworn to on May 2, 2007 submitted herewith (“Goldstein Affid.”), at ¶5. In addition to these families, there are more than 50 people living in the blocks at issue herein. *See id.* The incident of April 26 brings into sharp focus the type of irreparable harm that may occur if FCRC is permitted to continue demolishing buildings around them.

Petitioners submit, again, that it would be grossly unfair to allow FCRC, which acquired most of the properties at issue from owners pressured to sell under the threat of eminent domain, to level an entire neighborhood for a publicly subsidized Project while litigation is pending which may result either in the Project not going forward or the substantial modification of the Project. FCRC acquired many properties through negotiation only because the owners knew their properties would likely be condemned if they did not sell to FCRC. We note also that

FCRC required property owners to sign confidentiality agreements and to refrain from speaking out against the Project or supporting the Project's opponents.

In addition, petitioners submit that FCRC has not established that it will actually suffer any significant harm in the event this Court enjoins it from continuing demolitions on the “two and a fraction” blocks at issue until this case is resolved. FCRC would not be enjoined from performing work on the Vanderbilt Yards or other MTA-related work, or from performing abatement activities in the buildings it hopes to demolish, and in any event it will be precluded from performing most post-demolition work on the Project until other pending litigation by residents and property owners in the Project footprint is resolved.

FCRC President James Stuckey asserts in his affidavit that “it costs FCRC about \$2,400,000 per month to carry the real property that it has acquired for the Project and the overhead that is in place to work on the Project.” (Stuckey Affid. ¶ 25) Mr. Stuckey does not explain, however, whether the carrying costs are less if the land is vacant, making that figure largely irrelevant to determining whether FCRC will be harmed by a stay of demolition. Moreover, presumably only a fraction of those carrying costs apply to the “two and a fraction” blocks at issue herein.

Mr. Stuckey also asserts that any delay in construction of the Barclays Center arena may deprive the public of a facility that “will serve numerous civic purposes,” but identifies only the relocation of the Nets professional sports team among the purported “civic purposes.” (Stuckey Affid. ¶9, n.6) Notably, Stuckey relegated what most people recognize as the potential “civic” uses of the arena, such as uses for “amateur athletic events” and “graduations,” to a footnote – most likely because FCRC plans to charge local schools and community organizations more than

\$100,000 for each event. Construction of the arena will be delayed in any event, however, until all pending litigation is resolved.

With respect to petitioners' inability to post a substantial bond, petitioners submit herewith the Affidavit of Eric Reschke, president of lead petitioner Develop Don't Destroy Brooklyn, Inc. ("DDDB"), sworn to on May 2, 2007 ("Reschke Affid."). As Mr. Reschke avers, DDDB is supported entirely by community residents and small businesses, often through fundraisers such as walk-a-thons, bake sales, and events in local bars and restaurants. DDDB receives no corporate or government sponsorship, and the bulk of the money raised goes toward its legal fund. The other petitioners are similarly situated.

In contrast, the legal fees of ESDC are being reimbursed by FCRC pursuant to their agreement. *See Develop Don't Destroy Brooklyn v. Empire State Development Corporation*, Supreme Court, New York County, Index No. 100686/06 (Edmead, J.), *aff'd in part and rev'd in part*, 31 A.D.3d 144 (1st Dep't 2006).

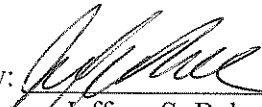
Petitioners have not provided complete financial disclosure herein because of confidentiality concerns, but will do so at the request of the Court.

CONCLUSION

For the foregoing reasons, Petitioners respectfully ask the Court to grant their motion for a preliminary injunction and to exercise its discretion to require them to post only a nominal undertaking, together with such other and further relief as this Court may deem just and proper.

Dated: May 2, 2007

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