

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

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DEVELOP DON'T DESTROY BROOKLYN, et al., : New York County
Index No. 100686/06

Petitioners-Plaintiffs-Respondents- :
Cross-Appellants, :

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

- against - :

EMPIRE STATE DEVELOPMENT CORPORATION, :

Respondent-Defendant-Appellant- :
Cross-Respondent, :

- and - :

FOREST CITY RATNER COMPANIES, :

Respondent-Defendant-Cross-Respondent. :

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**AFFIRMATION IN OPPOSITION TO MOTION BY
PETITIONERS-PLAINTIFFS-RESPONDENTS-CROSS-APPELLANTS
FOR LEAVE TO APPEAL TO THE COURT OF APPEALS**

JEFFREY L. BRAUN, an attorney admitted to practice law in the courts of the
State of New York, affirms under penalties of perjury as follows:

1. I am counsel to the law firm of Kramer Levin Naftalis & Frankel LLP, the
attorneys for Forest City Ratner Companies ("FCRC"), a respondent-defendant in this combined
Article 78 proceeding and declaratory judgment action, and a cross-respondent on the cross-
appeal by petitioners-plaintiffs-respondents-cross-appellants ("petitioners"). I make this
affirmation in opposition to petitioners' motion for leave to appeal to the Court of Appeals from

this Court's decision and order of May 30, 2006, insofar as it reversed the motion court's disqualification of David Paget and his law firm, Sive Paget & Riesel, P.C., from acting as environmental counsel to respondent-defendant-appellant-cross-respondent Empire State Development Corporation ("ESDC") in its ongoing environmental review of the proposed Atlantic Yards Arena and Development Project (the "Project").¹

2. Petitioners' motion should be denied, because this Court's decision was correct, and none of the questions presented by petitioners warrants review by the Court of Appeals. In brief, as this Court recognized in its decision, the choice of an attorney is a valuable right that the courts protect, public agencies have the same rights as other entities to select their attorneys, none of the petitioners ever was a client of Mr. Paget or his law firm, and Mr. Paget's former client, FCRC, consents to his representation of ESDC.

4. Petitioners' motion has nothing to do with the adequacy or integrity of the ongoing environmental review of the Project. Instead, the motion appears to be a tactical ploy to inject further uncertainty and confusion into – and thus both delay and undermine – the Project's environmental review by continuing to cast gratuitous aspersions on ESDC's environmental counsel of choice, who is widely viewed as one of the preeminent environmental lawyers in the nation, and one of unquestionable integrity.

5. The present motion in fact has allowed petitioners to continue to use this litigation as public relations propaganda to fuel opposition to the Project by attacking Mr. Paget. Despite this Court's expression of concern in its decision, based on petitioners' February 15, 2006 press release, that petitioners were using the disqualification issue as "a significant tactical

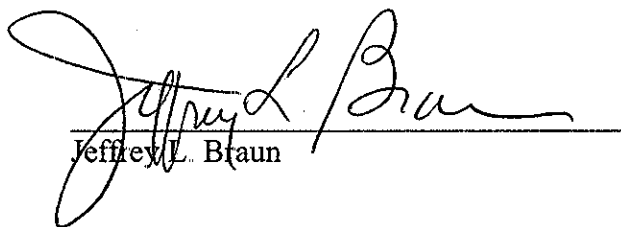
¹ This Court's decision also affirmed the motion court's decision insofar as it sustained the ESDC's emergency declaration allowing FCRC to demolish five dangerous buildings within the Project's footprint. Petitioners purport not to seek leave to appeal from this aspect of this Court's decision, but the issue now is moot, because the buildings have been demolished.

maneuver in their campaign against the Project” (at p. 18), petitioners issued a press release simultaneously with their making of this motion to announce what normally would be regarded as the pedestrian matter of a motion for leave to appeal. A copy of the press release, misleadingly subtitled “Plaintiffs Seek Fairness in Process in Which Attorney David Paget Is Shared by Forest City Ratner and ESDC on ‘Atlantic Yards’ Proposal Review,” is annexed hereto as Exhibit A.

6. No defect in the Project’s environmental review has resulted from Mr. Paget’s representation of ESDC. Petitioners’ conclusory assertions that Mr. Paget’s representation of ESDC has “tainted” the environmental review are bogus. This case should not be foisted on the Court of Appeals.

7. For the foregoing reasons and those set forth in ESDC’s opposing papers, leave to appeal to the Court of Appeals should be denied.

Dated: New York, N.Y.
July 6, 2006


Jeffrey L. Braun

**Develop—
don't destroy.
BROOKLYN**

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STATUS REPORT

REQUIRED READING

- Agreements
- Economic Analyses
- Environmental Documents
- Legal Documents
- Letters
- Memoranda of Understanding
- News Articles/Commentary
- Position Papers
- Times Report
- White Papers

COMMUNITY-BASED PLANS

- Extell Development Co. Plan
- UNITY Community Dev. Plan
- Community Design Principles

PRESS RELEASES

THE OPPOSITION

PHOTOS, POSTERS, & MORE

tel/fax: 718.362.4784

mail:

89 5th Avenue, PMB #150
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Related Links

- No Land Grab.org
- Atlantic Yards Report

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For Immediate Release: June 28, 2006

**Develop Don't Destroy Brooklyn and Co-Plaintiffs File Motion For Relief
in the Court of Appeals**
*Plaintiffs Seek Fairness in Process in Which Attorney David Paget is Shared by
Forest City Ratner and ESDC on "Atlantic Yards" Proposal Review*

NEW YORK, NY— Today Develop Don't Destroy Brooklyn and 15 co-plaintiffs filed a motion for leave to appeal a case it had won in State Supreme Court but was overturned last month by the Appellate Division. The case the plaintiffs won in the trial court centered around environmental attorney David Paget, of Sive, Paget & Riesel, who had an apparent conflict of interest as he had represented developer Forest City Ratner for its "Atlantic Yards" proposal and then switched to represent the state public agency-the Empire State Development Corporation (ESDC) charged with representing the public interest in the environmental review of the same development proposal.

Forest City Ratner's "Atlantic Yards" is the largest single-source development proposed in the history of New York City.

In their motion for leave to appeal to the Court of Appeals (the highest court in New York State), Develop Don't Destroy and its co-plaintiffs ("the petitioners") contend that:

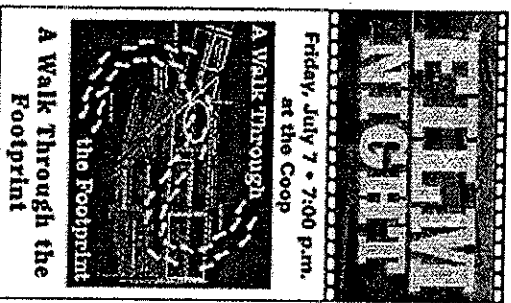
The specific conflict of interest issue presented here appears to be a case of first impression in New York State courts, and implicates fundamental issues of governmental integrity and accountability in the context of an enormously controversial development project that will have a significant impact on hundreds of thousands of citizens and significantly change several Brooklyn neighborhoods...

To hold that the ethical rules applicable to a public entity acting for the benefit of the public are the same as the rules applicable to purely private conduct, particularly in the context of the State

government's oversight and review of a publicly subsidized, large-scale community redevelopment project, undermines public trust in the integrity of government...

Because this issue is vitally important to the public and presents a novel issue of law, petitioners respectfully submit that leave to appeal to the Court of Appeals should be granted.

- Brooklyn Views
- The Brooklyn Papers
- New York Games.org
- Field of Schemes
- more..



"Our community intends to fight for justice and transparency in the environmental review process at every turn. To the extent that the political and economic elite think that they can run roughshod over the residents of Brooklyn by sharing advisers and ignoring the rules, we will seek the guidance of the highest court available, "Develop Don't Destroy Brooklyn legal committee chair Candace Carpenter said. "In this case, the trial court saw through the sham of the government and the developer sharing the same attorney on the same development proposal Forest City Ratner's 'Atlantic Yards.' Although the Appellate Division thought this conflict was acceptable, we hope the Court of Appeals will decide to hear the case and independently evaluate the situation. As such, we are making application to the Court of Appeals to review this case and to, we hope, rule in favor of transparency, fairness and the obligation of all parties to play by the rules; it's the least we can ask for when so much is at stake."

The motion can be found here:

www.dddb.net/documents/legal/demolification/papers/appeals/DDDB/060628AppealMotion.pdf

The Appellate Division's ruling can be found here:

www.nycourts.gov/reporter/3dseries/2006/2006_04190.htm

All case files can be found here:

www.dddb.net/php/reading/legal/democase/index.php

DEVELOP DONT DESTROY BROOKLYN leads a broad-based community coalition fighting for development that will unite our communities instead of dividing and destroying them

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