

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

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In the Matter of	:	New York County
	:	Index No. 104597/07
DEVELOP DON'T DESTROY (BROOKLYN), INC., et al.,	:	
	:	
Petitioners-Plaintiffs-Appellants,	:	
	:	
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-Respondents.	:	<u><b>AFFIDAVIT</b></u>

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

ANDREW P. SILBERFEIN, being sworn, states:

1. I am Executive Vice President and Director of Finance of Forest City Ratner Companies, LLC ("FCRC"). As such, I have overall responsibility for managing all aspects of FCRC's debt and equity financing requirements for its existing real estate portfolio and for its projects that are under development and construction, including the Atlantic Yards project that is at issue in this lawsuit.

2. The Atlantic Yards project is a more than \$4 billion project that contains several different components. Many of these components will be separately financed in a series

of different transactions. For example, FCRC will be refinancing the loans that enabled it to acquire much of the real estate in the project footprint. FCRC also anticipates entering into separate financing agreements for the project's infrastructure improvements and for each of the project's constituent buildings.

3. One of the most intricate aspects of the financing for the Atlantic Yards project is the financing for the multi-purpose arena that is a centerpiece of the project.

4. Under the general project plan that has been adopted by Empire State Development Corporation ("ESDC"), the land on which the arena is built will be owned by ESDC, which will lease it to a local development corporation (the "LDC") that will be organized by ESDC. This land in turn will be leased by the LDC to an FCRC affiliate.

5. To finance the construction and operation of the arena, the LDC will issue bonds that will be underwritten and sold to the public. The FCRC affiliate that leases the arena from the LDC will make "PILOT payments" to the LDC – i.e., "payments in lieu of taxes." The LDC will pay the debt service on the bonds that it issues.

6. At this time, Goldman Sachs has been selected as the lead underwriter for this bond financing. I have had extensive discussions with Goldman Sachs personnel about this financing.

7. The amount of the bond financing for the arena is expected to be in the amount of several hundred million dollars.

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8. As the Court surely is aware, the credit markets are in turmoil at this time. Many lenders and bond insurers are facing financial difficulties, and are becoming much more

cautious. It is not clear what the financial climate will be in several months, when the arena bond financing is made available to the public.

9. Although the decision that was issued by Justice Madden in this case on January 11, 2008 should be helpful in providing comfort to potential investors that there is no significant risk that the courts will annul the approvals for the Atlantic Yards project, there is a serious question as to whether, given the current state of the debt market, the underwriters will be able to proceed with the financing for the arena while the appeal is pending before this Court.

10. I realize that, once this Court has ruled on the appeal from Justice Madden's decision, further review by the Court of Appeals is a possibility, and I also am aware that other litigation remains pending. Nevertheless, an affirmance of Justice Madden's decision by this Court – which is, as I understand it, the only appellate court to which the petitioners have the absolute right to take an appeal – would help to allow the financing and long-delayed construction of the project to proceed.

11. By contrast, so long as the present appeal remains pending in this Court and therefore has not been reviewed by any appellate court, FCRC and the LDC are likely to encounter significant difficulties and cost increases in concluding the bond financing that is essential to the arena's completion.

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*Andrew Silberfein*  
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Andrew P. Silberfein

Sworn to before me this  
24 day of January, 2008.

Christine Lovico

CHRISTINE LOVICO  
Notary Public, State of New York  
No. 41-4868301  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires Aug 18, 2010