

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D26034
H/prt

_____AD3d_____

Argued - November 23, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-08423

DECISION & ORDER

In the Matter of West Bushwick Urban Renewal
Area, Phase 2. 534 Bushwick Avenue Corporation,
et al., appellants; City of New York, respondent.

(Index No. 35057/04)

Goldstein, Goldstein, Rikon & Gottlieb, P.C., New York, N.Y. (Jonathan Houghton
of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Lisa Bova-Hiatt, Fred
Kolikoff, and Holly R. Gerstenfeld of counsel), for respondent.

In a condemnation proceeding, the claimants 534 Bushwick Avenue Corp., and Sound
and Security Solutions, Inc., appeal from an order of the Supreme Court, Kings County (Gerges, J.),
dated August 1, 2008, which granted the motion of the condemnor, the City of New York, to dismiss
their claim for compensation for trade fixtures.

ORDERED that the order is affirmed, with costs.

Where an “improvement is inconsistent with the highest and best use of the property,
the claimant is not entitled to compensation for that improvement” (*Matter of West Bushwick Urban
Renewal Area, Phase 2*, _____AD3d_____, 2009 NY Slip Op 07649 [2d Dept 2009];
see Acme Theatres v State of New York, 26 NY2d 385, 388-389; *Van Kleeck v State of New York*,
18 NY2d 897, 899; *Irv-Ceil Realty Corp. v State of New York*, 43 AD2d 775, 776; *Matter of County
of Nassau*, 43 AD2d 45, 51, *affd* 39 NY2d 958). The claimants, who are the owners of both the
subject property and the trade fixtures located thereon, acknowledge that the trade fixtures are

inconsistent with the highest and best use of the subject property as mixed commercial and residential and, thus, would have to be destroyed. Consequently, the Supreme Court correctly granted the condemnor's motion to dismiss the claimants' trade fixtures claim (*see Matter of West Bushwick Urban Renewal Area Phase 2*, _____AD3d_____, 2009 NY Slip Op 07649 [2d Dept 2009]).

The claimants' remaining contentions are either not properly before this Court or without merit.

MASTRO, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court