

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

PRESENT: SMITH  
Justice

PART 62

DELLA PORTA, JOHN,  
ET AL.  
- v -  
EAST 51<sup>ST</sup> STREET DEVELOPMENT CO.,  
LLC,  
ET

INDEX NO. 104427/08  
MOTION DATE 9/08/08  
MOTION SEQ. NO. 05  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 1 were read on this motion to/for a preliminary injunction  
PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is denied as moot with leave to resubmit in the event of non-compliance with the order of this court entered on September 8, 2008 (copy attached) which was negotiated by the parties at the time of the oral argument on the proposed TRD sought in this motion.

**FILED**

SEP 30 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 9/22/08

K S Smith  
Keren S. Smith J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X  
JOHN DELLA PORTA AND DEBRA DELLA PORTA

Plaintiffs

Index No. 104427/08

-against-

EAST 51<sup>ST</sup> STREET DEVELOPMENT COMPANY, LLC  
ET. AL.

Defendants.  
-----X

IT IS HEREBY ORDERED AS FOLLOWS:

- 1) By September 9, 2008, at 10:00 a.m., the CITY OF NEW YORK will provide to counsel for East 51<sup>st</sup> Street Development Company, LLC the number of different locations where metallurgical testing will occur, what type of testing will be performed and what parts testing will be performed upon, on September 15, 2008;
- 2) A conference call will be held on September 9, 2008 between counsel for The City of New York, counsel for East 51<sup>st</sup> Street and the Court regarding the testing schedule for the City's metallurgical testing to be performed commencing September 15, 2008. At that time the dates and specifics of which parts will be tested, when, where and how will be discussed and all parties will be notified of the schedule etc.;
- 3) The City will give notice, by e-mail or fax, of not less than 48 hours as to any changes in the testing for September 15, 2008;
- 4) All parties present in Court today may each have one expert present on September 15, 2008 and all subsequent dates;
- 5) The CITY's expert will perform the testing covered by the protocols distributed to the parties, free from disruption or interference;
- 6) One videographer may be present at each testing procedure;
- 7) The CITY is to retain records of the identity of the experts conducting its testing;
- 8) The CITY is to provide to all parties, copies of photographs and factual observations made by its experts within 20 days after counsel's receipt of the expert's report;

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SEP 30 2008  
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NEW YORK

- 9) If the CITY maintains that an observation is also a conclusion or finding, the CITY may make an application to the Court for an *in camera* review to determine if it will be released;
- 10) Parties reserve the right to make application to the Court for disclosure of the conclusions contained within the CITY's reports of the tests conducted pursuant to the current protocol.
- 11) Next Discovery Conference is scheduled for 10/23/08 at 2:00 PM in Room 280 at 80 Centre St. Conference currently scheduled for 9/11/08 is adjourned to that date.

Dated: 09/08/08

So Ordered:



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Hon. Karen S. Smith

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SEP 30 2008  
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