

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

ELISELLE ANDERSON, RONALD PARRISH, ROBERT JACKSON, WILLIAM A. LASHLEY, JR., ALLISON SNIFFIN, JONATHAN WILLNER, ROBIN WEIL, DANIEL SAKS, NIKKIA REVEILLAC, YVONNE CHAK, JOEL WEISKOPF, MARINA DeFRANZA, and ADAM RADBELL,

Petitioners,

-against-

INDEX NO. 106056/08

NEW YORK STATE URBAN DEVELOPMENT CORPORATION,
d/b/a EMPIRE STATE DEVELOPMENT CORPORATION,

Respondents.

Administrative Order:

By letter dated May 19, 2008, counsel for respondent New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") requests that this special proceeding be transferred from Justice Herman Cahn of the Commercial Division to Justice Walter Tolub, one of two Supreme Court Justices that presides over a Tax Certiorari/Condemnation Part.

Petitioners are thirteen rent-stabilized tenants who reside in two buildings within the footprint of the proposed Atlantic Yards Land Use Development and Civic Project (the "Atlantic Yards Project"). Petitioners' counsel filed a Request For Judicial Intervention ("RJI") on May 14, 2008 in connection with this petition brought pursuant to CPLR Article 78 and designated the matter as "Special Proceeding - Article 78." Justice Herman Cahn was assigned to the matter on May 15, 2008.

Counsel for respondent ESDC contends that this assignment is in error, because this proceeding is not a commercial case, but rather is an eminent domain case which belongs in a condemnation part because petitioners raise claims under the Eminent Domain Procedure Law ("EDPL") in their attempt to void provisions of a funding agreement for the Atlantic Yards Project and compel ESDC to hold another EDLP public hearing. Respondent's counsel further contends that Justice Walter Tolub (Tax Cert./Condemn. Part 15) dismissed a special proceeding brought by these same petitioners in 2006 under Index No. 118212/06 against the ESDC challenging the Atlantic

Yards Project under the EDPL and other state laws in May 2007, and thus the current proceeding should be assigned to him.

Petitioners' counsel, by letter dated May 23, 2008, opposes any re-assignment of this proceeding, contending that it is not an eminent domain case, and that the condemnation of the properties in which the petitioners reside and the vesting of title in the ESDC is not an issue. Petitioners' counsel argues that the claim in this proceeding is that, under the EDPL, the Atlantic Yards Project must be completed in ten years; that thereafter, the ESDC must offer materially unimproved property back to the condemnees; and further, that the massive reduction in the size of the Atlantic Yards Project and its public benefits of affordable housing, jobs, and open space, together with an indefinite extension of the final completion date, mandates that the ESDC hold a public hearing. Petitioners' counsel further contends that the ESDC is engaged in blatant judge-shopping and that Justice Tolub demonstrated bias against the petitioners in the earlier proceeding.

Although Justice Cahn is a member of the Commercial Division, he may be assigned to handle petitions brought pursuant to CPLR Article 78 so the initial assignment was not in error. However, inasmuch as the petition in this proceeding seeks relief under the EDPL, specifically EDLP §§ 101, 204(B), and 406, it seems fair to consider it to be a condemnation matter. However, the proceeding filed under Index No. 118212/06 was dismissed by Justice Tolub and is no longer an active case in this court, and thus there is no basis to transfer this new proceeding to Justice Tolub as a related matter. See Section I(B) of the Operations Manual for the Supreme Court, Civil Branch, New York County. And, according to my Administrative Order dated May 12, 2006 (a copy of which is attached hereto), which sets forth the procedures that are to be used for the assignment of condemnation cases to the two assigned condemnation parts -- Part 15 (Tolub, J.) and Part 55 (Solomon, J.) -- cases in which the last digit in the first portion of the Index No. is even-numbered shall be assigned to Justice Solomon. Accordingly, this proceeding brought under Index No. 106056 should be re-assigned to Justice Solomon. I make no determination whatsoever regarding petitioners' bias claim.

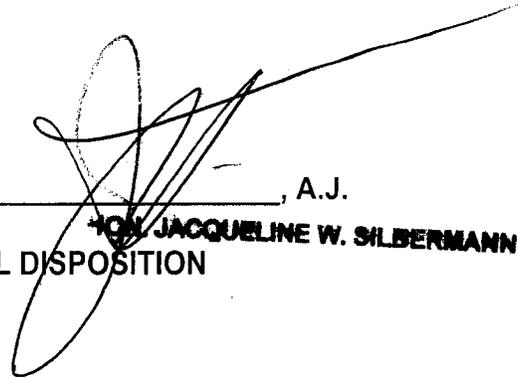
For these reasons, respondent's request to transfer this special proceeding from Part 49 (Cahn, J.) to a condemnation part is granted, and the Motion Support Office is direct to reassign this special proceeding to Part 55 (Solomon, J.) (The petition was marked fully submitted on May 28, 2008).

Dated: June 2, 2008

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION



JACQUELINE W. SILBERMANN