

Friends of Elizabeth St. Garden v City of New York

2022 NY Slip Op 33856(U)

November 15, 2022

Supreme Court, New York County

Docket Number: Index No. 152561/2019

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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FRIENDS OF ELIZABETH STREET GARDEN, DEBORAH GLICK, YUH-LINE NIOU, JEANNINE KIELY, KENT BARWICK, EMILY HELLSTROM, and BARRY LOEWER,

Petitioners,

INDEX NO. 152561/2019

MOTION DATE 12/28/2020

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, DEP'T OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK, PENNROSE, LLC, HABITAT FOR HUMANITY NEW YORK CITY INC, RISEBORO COMMUNITY PARTNERSHIP, INC, MANHATTAN COMMUNITY BOARD 2, GALE BREWER AS MANHATTAN BOROUGH PRESIDENT, NEW YORK CITY PLANNING DEPARTMENT, NEW YORK CITY COUNCIL, and BILL DE BLASIO AS MAYOR OF NYC,

Respondents.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 42, 43, 44, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 131, 132, 133

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the petition in its entirety shall be DISMISSED, as against respondent Gale Brewer, Manhattan Borough President, only, and the Clerk is directed to enter judgment accordingly, without costs and disbursements, in favor of such respondent; and it is further

ORDERED that the proceeding is severed and continued against the remaining respondents; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the respondents shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED and ADJUDGED that the petition is GRANTED only to the extent that the Negative Declaration dated November 9, 2018, for the "Haven Green" Project (CEQR No. 18HPD105M) issued by respondent New York City, Department of Housing Preservation and Development, is hereby VACATED and ANNULLED and the matter is remanded to respondents for proceedings consistent with this decision and order; and it is further

ORDERED that the petition is otherwise DENIED.

DECISION

This case is parallel to another proceeding by a different set of petitioners in which this court has previously issued an order determining certain of the claims raised here (see Order, Elizabeth St. Garden, Inc. v City of New York, Index No. 152341/2019, Sup Ct, NY County, Nov 1, 2022, James, J. [NYSCEF Doc. No. 157], herein the ["Parallel Proceeding"]).

Petitioners here are a civic group, neighbors and elected officials, who support the preservation of the Elizabeth Street Garden. The respondents include the City and its divisions as well as elected officials and community groups and organizations, alleged to be on the other side of the matter, which concerns the disposition of the subject property currently leased from defendant City of New York to the Elizabeth Street Garden, Inc., which is the subject of a proposed senior housing development project denominated as "Haven Green."

As a preliminary matter, the court shall dismiss the petition as against the named respondent Gale Brewer, Manhattan Borough President, because, as the petitioners concede in reply to respondents' answer, no relief is sought against that officer. The remaining respondents have answered the petition asserting various other affirmative defenses to the relief sought.

The court in the Parallel Proceeding has analyzed certain of the arguments presented by petitioners here and upon review of the papers in this proceeding adheres to its determinations of the claims at bar that overlap those in the Parallel Proceeding for the reasons stated therein.

To wit, with respect to the first cause of action here, the court finds that the respondents did not impermissibly issue a conditional negative declaration with respect to hazardous materials.

As concerns the second cause of action, the court held and continues to hold that based upon the evidence proffered in the Environmental Assessment Statement (EAS) as to the quantitative impact of the proposed development upon open space resources, the municipal respondents lacked a rational basis for issuing the negative declaration and that the negative declaration should be vacated and remanded to respondents for further proceedings consistent with the Order in the Parallel Proceeding.

With respect to the third cause of action alleged here, the court finds that this proceeding concerning SEQRA review is not an appropriate venue for litigating the issue of whether the Project as proposed complies with the applicable zoning codes. See Matter of WEOK Broadcasting Corp. v Planning Bd. of Town of Lloyd, 79 NY2d 373, 382 (1992).

As concerns petitioners' fourth cause of action, the court shall dismiss such claim that seeks a declaration that the Project is not eligible under the Urban Development Area Action Act because that statute, to the extent that it was proposed during the SEQRA review, was not invoked in respondents' approval of the Project and therefore the claim does not lie.

With respect to petitioners' fifth cause of action seeking to annul respondents' disposition of the property on the ground that the property is subject to a charitable trust declaration that restricts the usage of the property to educational purposes, the court agrees with respondents' arguments in opposition to the relief sought that the claim does not lie. The Petition itself sets forth that when the property was transferred to the New York City Board of Education in 1853, the deed contained no language of limitation on the future use or disposition of the property. Nor does the petition assert that there was any other explicit limitation on the use of the property so as to justify the assertion in the petition that a public trust had been formally created. As stated by the Court,

New York courts have held that where a gift is made to a charitable corporation subject to the restriction that it be used for a specific purpose which is one of its corporate purposes, no trust is created in the technical sense. . . In order to find that a restriction has been placed upon the use of a gift to a charitable corporation, such restriction must be clearly expressed. . . While a charitable trust may be created by a declaration of the owner of the property

that he holds it upon a charitable trust, no trust is created unless the donor manifests an intent to impose enforceable duties. While no particular words are required to create the trust, the words and acts relied upon must be unequivocal in nature and admit of no other interpretation than that the property is held in trust.

Lefkowitz v Cornell Univ., 35 AD2d 166, 171 (4th Dept 1970), affd, 28 NY2d 876 (1971). Therefore, the court finds that there is no trust imposed upon the subject property as asserted by the petitioners.

A similar result is therefore compelled as to petitioners' sixth cause of action that asserts that there is a fiduciary duty owed by the respondents to petitioners and the New York City Board of Education. Such claim is similarly misplaced and subject to dismissal, as there is no adequate basis for the existence of such duty.

Finally, the terms of the disposition of the property cannot be said to violate the New York State Constitution as asserted in petitioners' seventh cause of action because, where

a "project provides a substantial public benefit, . . . it cannot be equated with an unconstitutional gift or loan to a private party as prohibited by Article 8, section 1 or Article VII, section 8 of the State Constitution." Tribeca Community Ass'n, Inc. v New York State Urban Dev. Corp., 200 AD2d 536, 537 (1st Dept 1994).

Debra A. James

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<u>11/15/2022</u>			<u>DEBRA A. JAMES, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> OTHER
	<input type="checkbox"/>		<input type="checkbox"/>
			<input type="checkbox"/> REFERENCE
			<input type="checkbox"/>
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