

Second Circuit Affirms Dismissal of Challenge to “Atlantic Yards” Condemnation

The Second Circuit Court of Appeals upheld dismissal of the challenge to condemnation of private property for the Atlantic Yards Project in Brooklyn stating in the case *Goldstein v. Pataki*, decided on February 1, 2008: “...eminent domain has its costs, it has its benefits, and in all but the most extreme cases, Supreme Court precedent requires us to leave questions of how to balance the two to the elected representatives of government, notwithstanding the hardships felt by those whose property is slated for condemnation.” The Court found that neither the fact that the area at issue would be developed privately nor the fact that the individual property owners’ lots are not themselves blighted changed the public purposes of the project to remove blight and provide affordable housing.

The well publicized proposal is to construct a new sports arena for the New Jersey Nets, sixteen high rise apartment buildings and several office towers in a portion of downtown Brooklyn which the Court described as being “afflicted for decades with substantial blight.” Plaintiffs are 15 property owners whose homes or businesses are in a less blighted portion of the project area which are slated for condemnation.

Plaintiffs claimed violations of the “Public Use Clause” of the Fifth Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, along with a New York State law claim. The basis for the action was the allegation that the “public use” for the project is merely a pretext and any incidental public benefit is secondary to the primary purpose of the project, which Plaintiffs’ claim is to allow a private taking in order to advance the personal fortune of the developer, Bruce Ratner.

The District Court, on a motion to dismiss, dismissed the federal claims and declined to retain supplemental jurisdiction over the state claim. Finding that “pretext” was an argument that could be advanced under the Supreme Court decision in *Kelo v. City of New London*, the District Court determined a reasonable juror could not conclude removal of blight and construction of 2,250 new units of affordable housing were mere pretexts. The District Court also concluded, based upon a prior holding by the Circuit Court in *Brody v. Port Chester*, that the due process challenge to the New York Eminent Domain Procedure Law would fail.

On appeal, Plaintiffs claimed that government officials had abdicated their eminent domain authority and had been co-opted by Mr. Ratner in order to increase his personal profit. While the Circuit Court noted that the Fifth Amendment requirement that private property may not be taken without just compensation has been understood to include the prohibition of taking private property for the benefit of another private person without “a justifying public purpose” the court also observed that “the primary mechanism for enforcing the public-use requirement has been the accountability of political officials to the electorate, not the scrutiny of the federal courts.”

The Court concluded the role of the Courts is the narrow one of determining if the exercise of eminent domain is “rationally related to a conceivable public purpose” (citing

Hawaii Housing Authority v. Midkiff). It found the Complaint on its face conceded “several well-established categories of public uses, among them the redress of blight, the creation of affordable housing, the creation of a public open space, and various mass-transit movements.”

Finally, the Court determined that the “single sentence” in the *Kelo* decision referring to pretext did not open the door “to require federal courts in all cases to give close scrutiny to the mechanics of a taking rationally related to a classic public use as a means to gauge the purity of the motives of the various government officials who approved it.”