

**Ball v New York City Hous. Auth.**

2012 NY Slip Op 30859(U)

March 12, 2012

Sup Ct, NY County

Docket Number: 108372/11

Judge: Geoffrey D. Wright

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

PRESENT: GEOFFREY D.S. WRIGHT PART 62  
*Justice*

In The Matter Of The Application Of  
TYRONE BALL, et a.,

Plaintiff/Petitioner(s)

- v -

NEW YORK CITY HOUSING AUTHORITY, THE CITY  
OF NEW YORK, et al.,

Defendants

INDEX NO. 108372/111

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

The following papers, numbered 1 to 23 were read on this motion to/for prelliminary Injunction

	PAPERS NUMBERED
Notice of Motlon/ Order to Show Cause — Affidavits — Exhibits ...	<u>1,2,3,4,5,6,7,8,9,10,11, 12,13,14</u>
Answering Affidavits — Exhibits _____	<u>15,16,17,18,19,20,21,22,23</u>
Replying Affidavits _____	
Other _____	

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered that this motlon/petition by the Petitioners for a prelliminary injunction is denied, a/p/o..

Dated: Mar 12, 2012

GEOFFREY D. WRIGHT  
*G*

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION <sup>AJSC</sup>

Check if appropriate:  DO NOT POST

**FILED**

APR 04 2012

NEW YORK  
COUNTY CLERK'S OFFICE

FILED

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 62

APR 04 2012

NEW YORK  
COUNTY CLERK'S OFFICE

-----X

TYRONE BALL, ADRIAN BIGGS,  
FRANSOIZE BRADFORD, BRENDA BROWN,  
C A R L BURKS, TAMETHA BURNEY,  
MARGARITA CABAN, BRENDA CABRER4,  
ALTAGRACIA CLUMES, VICTORIA COCHRANE,  
EUGENE COLE, PAMELA COLEMAN,  
JULIAN COOPER, CARMEN CRESPO,  
WILLIAM DANZY, JANIRA DE LOS SANTOS,  
KADIDIA DIAKTTE, ALTAGRACIA DIAZ,  
ALMASI DOWLING, LEONA DRAPER,  
SARAH EVANS, EUGENIA GOMEZ,  
MICHELLE GOODMAN, GABIUELLE GROOMS,  
DELORES HARRIS, HUGH HEWITT, FRANCES HINTON,  
LUELLE HOOKS, LUAL HORTON, FRANK JAMES,  
MAXINE JENKINS, LESLIE JOHNSON, EVA KEYS,  
CORY KNIGHT, MAURICE LAMBRIGHT,  
JACQUELINE LEE, EVA LESANE, LISA LOPEZ,  
FREDDIE LUKE, MAGGE LYONS, MONICA MANNERS,  
TYRONE MCCLURGE, DOROTHY MCDONAL,D,  
ANN MCKINNEY, ISADORA MILLIGAN, WENDY  
K. MOORE, EVELYN MOORE, BARBARA MOSES,  
WILLNESS MOYO, MAGGIE MYERS, MARIA NEGRON,  
JACOB NELSON, JR., YOLANDA ODOM, MANUEL OLIVO,  
DAVID OTIS & MORRIS OTIS, JOSEPH PAGE,  
FELIPA PALACIOS, NYITA PATTERSON,  
DELORIS PINKNEY, ALEXANDRA RAMOS,  
JUANITA RAMOS, CAROLYN RILEY, GLORIA RIVERA,  
MICHELLE IUVERA, TERESA ROBINSON, NORMAN  
ROCHFORD, FORIBIA RODRIGUEZ, OMAR FRANK  
RODRIGUEZ, SHASHONA SALLEY, RUFUS C. SHAW,  
ADRIENNE SIMMONS, JOAN SMITH, RICHARD SPELLER,  
MARY SPELLMAN, MISSOULE ST. VICTOR, JOSEPHINE TEAL,  
ZUNILDA TESADA, LEONOR THELMA, NATHANIEL THOMAS,  
YOLANDA THOMAS, CAROL TOLBERT, CAROLYNE TOLBERT,  
VICTOR TORRES, DAVID VALENTINE, CANDIDA VASQUEZ,  
MAXINE VAUGHN, AHADINA VAZQUEZ, FRANCINE  
WALLACE, LINDA WASHINGTON, WILLIAM WELCOME,  
AL,BERTHA WJ4ALEY, ARNETTE WHEELER, ANNETTE  
WILLIAMS, PATRICU HARDY WILTSHIRE, VALERIE WRIGHT,  
CATHERINE YATES, and STATE SENATOR BILL P E I K N S  
Petitioners,

-against-

THE NEW YORK CITY HOUSING AUTHORITY,  
THE CITY OF NEW YORK, HARLEM CHILDREN'S  
ZONE, M.C., MICHAEL BLOOMBERG, As Mayor Of  
The City Of New York and JOHN B. RHEA, As  
Chairman Of The New York City Housing Authority,

Index # 1 1 108372/11  
Motion Cal. #  
Motion Seq. #  
**DECISION/ORDER**  
Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

Respondents.

-----X

Recitation, required by CPLR 2219(a), of the papers considered in the review of this Motion for Preliminary Injunction:

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1,2,3,4,5,6,7,8,9,10 11,12,13,14
Order to Show Cause, Affidavits & Exhibits Answering Affidavits & Exhibits Annex	15,16,17,18,19,20, 21,22,23
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion) & Exhibits Annexed	

**FILED**

APR 04 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Ninety plus residents of the St. Nicholas Houses, a large community owned and operated by the New York City Housing Authority, bring this proceeding to stop the completion of a charter school that has been under construction since March of 2011, when the first piece of ground was broken. The school is being erected in the middle of the project, and will deprive the residents of approximately 1.3 acres of land that was purchased from the New York City Housing Authority for the purpose of building the school. To accommodate the residents, some of the aesthetic amenities of the area have been transplanted, literally, in the case of trees that have been uprooted and moved, or stored be replanted upon the completion of construction.

The petition seeks to achieve its goal of stopping, or tearing down the school, on the basis of the following issues: (1) alienation of park land; (2) breach of the warranty of habitability; (3) breach of the covenant of quiet enjoyment; (4) failure to conduct an environmental review; (5) failure to comply with ULURP procedures; (6) failure to comply with ULURP procedures in the sale of land; (7) failure to consult with the residents on the sale of Housing Authority property.

Some of the claims can be disposed of summarily. Claims two and three, dealing with the individual claims of residents of the St. Nicholas Houses, sounding in the warranty of habitability or quiet enjoyment, must be dismissed in that they have not claimed, and indeed, concede, that no notice of claim alleging the breach of the warranty of habitability or of quiet enjoyment was ever served [*PUBLIC AUTHORITY LAW 157*]. This project began to be discussed in public as early as 2009. The decision to do forward was announced in December 2010, meaning that any action on the foregoing claims had to be commenced no later than April, 2011. This proceeding was commenced in July, 2011, beyond the applicable time frame.

As to the last claim in the petition, the failure to consult with residents of St. Nicholas Houses prior to the sale of property, is belied by the record submitted by the Respondents. Indeed, there is correspondence in the record from at least one of the petitioners, and Community Board meetings that belie this claim.

The allegations anent the failure to conduct an environmental review and to comply with ULURP requirements is also belied by the record, which demonstrates, through the affirmations of Daniel Green and Cara McAteer, which explain in some detail, just how the project did in fact comply with the foundational requirements to get the project started. I take particular note of a letter, dated April 22, 2010, inviting the residents of St. Nicholas Houses to a meeting on the project that was scheduled for May 5, 2010. On June 12, 2010, there was an open house on the issue. The open house was continued on June 14, June 21 and June 28, 2010, as various details of the project were to be discussed with residents of St. Nicholas Houses, and apparently, anyone in the neighborhood who was interested in attending.

Those meetings raise the question of laches, even assuming that the Petitioners could argue of limitation period beyond the basic four months referred to in CPLR 217 [*SARATOGA COUNTY CHAMBER OF COMMERCE, INC. v. PATAKI*, 100 N.Y.2d 801, 798 N.E.2d 1047 N.Y., 2003, “Where “no other form of proceeding exists for the resolution of the claims tendered in the declaratory judgment action, the six-year limitation of CPLR 213 (subd. 1) will then be applicable” ( Solnick, 49 N.Y.2d at 230, 425 N.Y.S.2d 68, 401 N.E.2d 190).”]; *KAREDES v. COLELLA*, 100 N.Y.2d 45, 790 N.E.2d 257, 760 N.Y.S.2d 84, 2003 N.Y. Slip Op. 13922]. However, where the delay in commencing an action results in substantial prejudice to another party, laches can apply, notwithstanding the fact that a period of limitation has not yet expired [*MATTER OF BARABASH*, 31 N.Y.2d 76, 81, 334 N.Y.S.2d 890, 286 N.E.2d 268 [1972]; see also *MATTER OF DREIKAUSEN v. ZONING Bd. OF APPEALS*, 98 N.Y.2d 165, 173 n. 4, 746 N.Y.S.2d 429, 774 N.E.2d 193 [2002]]. While I am aware of current concerns about the progress of construction since this matter was last heard, the basic foundation has progressed to the point where it was at least 20% complete when the request for a preliminary injunction was first argued. Photographs submitted by the Respondents show that the so called park land that the Petitioners seek to preserve was gone by the date of the first court appearance, and many millions of dollars had been spent and many more committed. The Petitioners also requested a second hearing in court, which was held in December, thus allowed several months of more work to be done.

The claim that park land has been alienated must be and is dismissed. The so-called park land is nothing more than a circle along a walkway through the grounds of the housing project. Park land must be dedicated as such in some manner [*GRAYSON v. TOWN OF HUNTINGTON*, 160 A.D.2d 835, 837, 554 N.Y.S.2d 269, lv. denied 76 N.Y.2d 714, 564 N.Y.S.2d 718, 565 N.E.2d 1269; *CATHEDRAL CHURCH OF ST. JOHN THE DIVINE v. DORMITORY AUTHORITY OF STATE OF NEW YORK*, 224 A.D.2d 95, 645 N.Y.S.2d 637]. No such finding can be made here, particularly, when the published layout of the grounds provides for playgrounds/parkland, in other areas of the campus, which space will not be disturbed here. The fact that some people put open space to improper use as football fields or golf courses, does not result in parkland.

Although I advised the Petitioners that in proper circumstances, an order could be made directing the demolition of the project, the current circumstances do not meet that standard. As the record reveals, this project was the subject of much public discussion for many months prior to the transfer of title, or the commencement of actual work. Indeed, the inclusion of a State senator as a petitioner, confirms the existence of laches here, considering the amount to governmental input before any work was commenced.

In this, as in all cases, the denial of a temporary restraining order is a clear signal that perhaps the applicant is on shaky ground. That is the case here. The motion for a preliminary injunction is denied. This constitutes the decision and order of the court.

Dated: March 12, 2012

  
**GEOFFREY D. WRIGHT**  
AJSC