



THE CITY OF NEW YORK
LAW DEPARTMENT

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MICHAEL A. CARDOZO
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July 8, 2005

BY HAND DELIVERY

Honorable Michael D. Stallman
Supreme Court of the State of New York
New York County
Room 307
80 Centre Street
New York, NY 10013

Re: *Landmark West, et al. v. City of New York*, Index No. 103689/05

Dear Justice Stallman,

We write to update the Court concerning certain developments in the above matter, which seeks to challenge the City's proposed sale of 2 Columbus Circle (the "Building") to the Museum of Arts and Design. We write this letter with the consent of Petitioner's counsel, David Rosenberg.

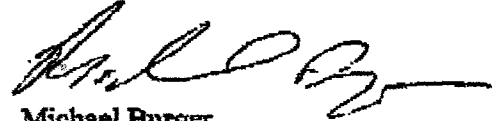
In communications with the Court on June 30, 2005, the City committed that it would neither close on the sale the building nor allow work to be performed under certain existing permits issued by the New York City Department of Buildings prior to July 15, 2005. In a telephone conference between the parties and the Court on that day, we stated that the City would seek to extend that commitment in deference to the Court, and that we would discuss the Court's request that the City withdraw, without prejudice, its request for sanctions in this matter. All parties were directed to appear on July 11 in order for the City to update the Court.

The City presently commits that it will neither close on the sale of the Building nor authorize work under any existing building permits prior to either September 7, 2005, or, should the Court issue a decision favorable to the City in this matter, the date of that decision, whichever is earlier. It is the parties' understanding that the City may continue to perform ordinary maintenance on the building and undertake any emergency repairs that are required. The City also agrees to withdraw its request for sanctions, without prejudice to renew.

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Because the parties have reached an accord regarding the above issues, we respectfully request that the conference, now scheduled for July 11, 2005, be adjourned to a later date that is convenient for the Court.

Respectfully submitted,



Michael Burger
Assistant Corporation Counsel

cc: David Rosenberg, Esq.



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MICHAEL A. CARDOZO
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June 30, 2005

BY FACSIMILE

Honorable Michael D. Stallman
Supreme Court of the State of New York
New York County
IAS Part 5, Room 307
80 Centre Street
New York, NY 10013

Re: *Landmark West, et al. v. City of New York*, Index No. 103689/05

Dear Justice Stallman,

I write in response to a letter dated June 30, 2005, submitted by David Rosenberg, attorney for plaintiffs in the above referenced matter. The City of New York ("City") presently owns and maintains the building at 2 Columbus Circle ("building"). Permits for work on and in the building were issued by the New York City Department of Buildings ("DOB") to the Museum of Arts and Design ("Museum"). For as long as the City owns the building, however, work under those permits cannot begin without authorization from the City. The City commits that it will not authorize work under the DOB permits to begin or close on the sale of the building to the Museum until close of business on July 15, 2005.

Respectfully,

Michael Burger
Assistant Corporation Counsel

cc: David Rosenberg, Esq.

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Whitney North Seymour, Jr.
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July 5, 2005

From: David Rosenberg, Esq.

Number of Pages (including cover sheet): 7

Re: Two Columbus Circle

Attached is Mr. Rosenberg's draft memorandum and proposed public statement, together with a June 30, 2004 letter from the City.

Although Mr. Rosenberg dictated the memorandum and statement, he has not had the opportunity to review, correct or revise them.

Pat Bede
Secretary to D. Rosenberg

Client No.: 89628/002

PLEASE NOTE: This transmission is intended solely for the addressee and may include confidential legal communications. Please deliver it immediately to the addressee without copying or reading it. Thank you.

CONFIDENTIAL -- ATTORNEY/CLIENT COMMUNICATIONMEMORANDUM

TO: Antonia Bryson, Esq.
Bruce Simon, Esq.
Kate Wood, Executive Director
Landmark West!
Whitney North Seymour, Jr., Esq.

July 5, 2005

FROM: David Rosenberg, Esq.

Re: 2 Columbus Circle; Our File No. 89628.002

This is to recount my best recollection of the conversation on Thursday, June 30, 2005, with Justice Michael Stallman and Assistant Corporation Counsel Michael Burger and a subsequent conference call with Justice Stallman, Michael Burger and Assistant Corporation Counsel Chris Reo.

In response to my June 30, 2005 letter to Justice Stallman (who has before him the City's motion to dismiss Landmark West!'s public trust/gift and loan case), Justice Stallman called and asked me to arrange a conference call with the City's attorney, Michael Burger, which I did.

Michael Burger confirmed that the closing on the transfer of Two Columbus Circle had not taken place. Justice Stallman stated that he did not wish that there be any change in the status quo *pendente lite*. He said that if this was a problem with the City, he would make time to see us Friday. Unless he received a written undertaking by the City to take no action *pendente lite* to alter the building, he would hold a hearing on my request for a temporary restraining order.

Justice Stallman suggested that the City could even take credit for agreeing to the standstill and suggested that the parties could even hold a joint press conference to demonstrate how they were now working together.

Justice Stallman then re-emphasized that, other than emergency work required to protect health or safety, there should be no alteration or demolition *pendente lite*. Unless he received a letter by 10 a.m. the following morning, the City would be required to appear before him.

Antonia Bryson, Esq.
Bruce Simon, Esq.
Kate Wood, Executive Director
Whitney North Seymour, Jr., Esq.
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Justice Stallman stated that he did not see a major issue "as to the larger issues". He suggested that the parties attempt to clear the air and lower the temperature. As a first step, he suggested that the City withdraw its request for sanctions against Landmark West! and its attorneys. Justice Stallman stated that he was well aware of the entire matter, including issues not before him but related to those before him, including the Landmark Preservation Commission's ("LPC") discretion.

One way to deal with the whole issue globally would be to hold a hearing. He suggested that LPC deal with the issues seriously. He felt that it would be good to have a fresh look.

He recognized that the building has had mixed reviews from the beginning but that the LPC should look at the building anew and reconsider the merits. I, of course, agreed. Michael Burger, of course, objected.

Michael Burger pointed out that there was a motion returnable on Wednesday, July 6, on the City's motion to dismiss the writ of prohibition proceeding brought by Mike Seymour. Justice Stallman pointed out that it was not properly a motion to dismiss but an objection in point of law pursuant to CPLR 7804(f).

Justice Stallman stated that he had raised this issue with the Corporation Counsel on prior occasions. He felt that it was wasteful to make a motion to dismiss but that the better practice would be to answer and then make a motion.

When he had a chance to respond, Michael Burger said that the LPC staff had found nothing new with respect to the most recent submissions relating to Two Columbus Circle. I responded that it was never intended to be a staff determination but that the Commission was the body empowered to make such substantive determinations.

Justice Stallman suggested that the LPC exercise discretion to hold a hearing. He suggested that the Corporation Counsel bring it to the Mayor's attention and to suggest that he be a peacemaker. He could help to diffuse tension in this town.

The Mayor should use his bully pulpit to suggest to the LPC that they hold a hearing and take a dispassionate fresh look. Justice Stallman said "[t]his is larger than

Antonia Bryson, Esq.
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any of us." He said that there is no point in dealing with it piecemeal. He compared the issue to Penn Station and Grand Central Station.

Michael Burger responded that these considerations already were made. He added that, even if a hearing were held, it would not necessarily be a final resolution.

Justice Stallman said that his decision on the present motion may not be a final determination, *i.e.*, he may merely deny the City's motion, permitting the action to proceed. Justice Stallman said that both sides have to get realistic and practical. He again suggested that the City withdraw the motion for sanctions without prejudice. Michael Burger said that he could not do so without the consent of others.

A conference call was then scheduled for 4:00 p.m.

At 4:15 p.m., a conference call among Justice Stallman, Chris Reo, Michael Burger and myself took place. The letter from the City was handed to Justice Stallman by one of his assistants. He said that it was no good. He said that he felt the letter unacceptable. He said that he would sign an order to show cause with a temporary restraining order to prevent any alterations *pendente lite*, except emergency work or work necessary to protect life, health or safety.

Justice Stallman said that the City's position was unacceptable and that he deemed the prior conversation with Michael Burger to have been a promise for more. Justice Stallman said that the process is very important.

While the City might prevail on substance, its posture in this action has not cast it in good light. He said that this is no way to deal with the people of the City of New York.

Chris Reo said that the commitment to maintain the status quo through July 15 was the best that they could obtain without consulting their "clients", who were not then available.

Unless the City agrees to a greater standstill pending the determination of the motion, we are all to appear before Justice Stallman in Room 307 at 80 Centre Street on July 11 at 10 a.m.

Antonia Bryson, Esq.
Bruce Simon, Esq.
Kate Wood, Executive Director
Whitney North Seymour, Jr., Esq.

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N.B. I believe that it would be counterproductive for any of the details of the conversation to be released publicly.

I am sending a sample statement which I believe will not tarnish the white hats which we currently wear before Justice Stallman.

Proposed Public Statement

On March 17, 2005, Landmark West! and a number of concerned West Side residents commenced an action against the City of New York and the NYC Economic Development Corporation ("EDC") to prevent the sale of Two Columbus Circle to the Museum of Art & Design ("MAD").

Among the arguments raised in the action were:

(1) Two Columbus Circle had been expressly given to the City by Gulf & Western to be used as a public facility and had been accepted by the City with such restriction. Under the circumstances, as public trust property, it could not be conveyed by the City without an act of the Legislature; and

(2) The price for which EDC contracted to sell the building to MAD was lower than other offers and lower than the fair market value of the property. When combined with cash appropriations to MAD from the City, the building effectively was being given to MAD, which violated the gift and loan prohibitions of the New York State Constitution.

The City and EDC have moved to dismiss Landmark West!'s action, but the motion has not been decided.

When The New York Times reported that the Department of Buildings ("DOB") had issued permits to alter both the facade and the interior of Two Columbus Circle, Landmark West!'s attorneys notified the Court and a conference call was held, as a result of which the City's attorneys have issued the attached letter, committing not to convey the building or permit work under the DOB permits until the close of business July 15, 2005. Unless the City and EDC agree to further extend the standstill period, the Court has set a hearing date of July 11, 2005, on Landmark West!'s application for a temporary restraining order.