

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

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LANDMARK WEST!, ARLENE SIMON, : Index No. /04
SUE MELLINS and SOPHIA deBOER, :
individually in their own right, and on behalf :
of the residents of the Upper West Side of :
Manhattan and those concerned with historic :
preservation, due process and open government, :

Plaintiffs,

- against -

MANHATTAN BOROUGH BOARD, : COMPLAINT

Defendant.

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Plaintiffs, by their attorneys, Marcus Rosenberg & Diamond LLP, as their
complaint against defendant, upon information and belief, allege:

As and For a First Cause of Action

The Parties

1. Defendant Manhattan Borough Board (the "Borough Board") is
body politic established pursuant to Section 85 of the New York City Charter (the
"Charter"), consisting of the Borough President and City Council members elected from
the Borough of Manhattan and the chairperson of each Manhattan Community Board.

2. Plaintiff Landmark West! is an award-winning non-profit grassroots community organization which, since 1985, has worked to protect the historic architecture of the Upper West Side and to improve the community for all of its residents.

3. Plaintiff Arlene Simon is a founder and officer of Landmark West! and a resident of 27 West 67th Street, within the jurisdiction of the Borough Board.

4. Plaintiff Sue Mellins owns real property, where she resides, at 22 West 66th Street, within the jurisdiction of the Borough Board.

5. Plaintiff Sophia deBoer owns real property, where she resides, at 25 Central Park West, within the jurisdiction of the Borough Board.

6. The individual plaintiffs and Landmark West!, on behalf of its members and residents of the community, are suing as residents of the City of New York (the "City"), Borough of Manhattan, many of whom frequently travel by and admire the building at issue, and as taxpayers with assessments exceeding \$1,000, to enforce their rights, to prevent illegal actions and to prevent waste of City property and assets and collusive transactions, pursuant to Section 51 of the General Municipal Law.

The Dispute

7. This dispute involves the sale of a landmark-quality building located at Two Columbus Circle in Manhattan (the "Building").

8. The Building was commissioned by A&P Supermarket heir, Huntington Hartford, in 1955, who hired Edward Durrell Stone, considered to be one of America's most important and admired architects of the post-World War II era, to design a landmark cultural institution, the Gallery of Modern Art (the "Gallery"), which opened in 1964.

9. After the Gallery closed and the Building passed through various owners, it was donated to the City of New York, in 1980, to serve as the City's "principal public facility for visitors' services and cultural affairs and for no other purpose."

10. Pursuant to Article VIII of the New York State Constitution and Section 384(b)(1) of the Charter, City-owned property may be sold only for the highest marketable price at public auction or by sealed bids after public advertisement and after public hearing.

11. In addition, pursuant to Section 384(b)(3) of the Charter, such property may be sold only after appraisal within six months' prior to authorization for the sale and after a review of the appraisal within thirty days prior to authorization of the sale.

12. The City officials sought to avoid these and other legal protections against secret below market sales to "favored" bidders by employing an exception contained in Section 384(b)(4) of the Charter.

13. That Section permits the sale of certain City property to a "local development corporation" without competitive bidding for a purpose and price determined by the Mayor with the approval of a majority of the members of the Borough Board in the borough in which the property is located.

14. In this case, the Mayor selected as the "local development corporation" the New York City Economic Development Corporation ("EDC"), which issued a "Request for Proposals" ("RFP") for the sale of the Building in March 2000.

15. It has been reported that there were many responses to the RFP, from museums, other institutions and a variety of other potential users.

16. On June 14, 2002, EDC -- which did not own the Building -- "conditionally designated" the Museum of Arts and Design ("MAD") as the purchaser.

17. The City did not disclose the terms of the transfer to EDC or the terms of the transfer to MAD.

18. Although it has been reported that MAD's bid was far from the highest, the City and EDC refused to disclose the terms of competing bids, even after MAD was designated.

19. MAD proposed to use the Building for the very purpose for which it had been expertly designed, *i.e.*, as a museum for the display of works of art.

20. However, rather than maintaining its original design, thereby preserving and honoring a work of art, MAD has insisted on unnecessarily destroying the Building's white marble facade and replacing it with a more "modern" exterior to fit in with the Time Warner Center and the Trump International Hotel and Tower.

21. On July 2, 2003, the City Planning Commission approved the sale, leaving only a formal approval by the EDC Board of Directors and the Borough Board's vote as prerequisites to the sale, according to the City.

22. Then, for more than a year, neither the City or EDC sought these final approvals.

23. In August 2004, the Manhattan Borough President informally announced that she intended to schedule a hearing (the "Hearing") and vote on the sale of the Building on August 19, 2004, later changed to August 24, 2004.

24. Landmark West! and others protested that this would place the Hearing during the last two weeks before Labor Day, a time when New Yorkers traditionally take summer vacations and that this year, with the anticipated disruption of the Republican Party National Convention, even more planned to leave town. They urged the Borough President to defer the Hearing until after Labor Day and to provide meaningful notice to the public.

25. The Borough President refused and provided only formal notice in the City Record two business days before the Hearing and sent information to the Borough Board members, themselves.

The Controlling Law

26. Section 85(b)(10) of the Charter requires the Borough Board to:

Give notice of all its public meetings and hearings, and make such meetings and hearings available for broadcasting and cablecasting.

27. The New York State Open Meetings Law, Article 7 of the Public Officers Law, declares:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.

28. In furtherance of this important public policy, Section 104(a) of the Open Meetings Law provides:

Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

29. Contrary to these express directions, public notice was not given to the news media nor were arrangements made for news media coverage.

30. Moreover, the scheduling of the Hearing during the summer vacation period and without any attempt to provide meaningful notice violated the purpose of the required "public hearing."

31. Ultimately, with no significant public input, the Borough Board adopted a resolution approving the sale of the Building.

Conclusion

32. Lacking any other adequate remedy, Plaintiffs must seek declaratory and injunctive relief from this Court.

WHEREFORE, a judgment should be granted:

(1) Declaring that the resolution of the Borough Board approving the sale of the Building is null and void and without force or effect;

(2) Enjoining any action based upon the Borough Board's resolution; and

(3) Granting to plaintiffs such other and further relief as is appropriate.

Dated: New York, New York
December 1, 2004

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