

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

- - - - - x

LANDMARK WEST!, BOARD OF MANAGERS OF : Index No. /05  
THE PARC VENDOME CONDOMINIUM, STUART :  
URAM, TERI SLATER and HILDA M. REGIER, :  
individually in their own right, and on behalf :  
of the residents of the Upper West Side of :  
Manhattan and those concerned with historic :  
preservation, and respect for the Constitution, :  
statutes and common law of the State of :  
New York, :

*Plaintiffs,* :

- against - :

THE CITY OF NEW YORK and NEW YORK : COMPLAINT  
CITY ECONOMIC DEVELOPMENT :  
CORPORATION, :

*Defendants.* :

- - - - - x

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

**As and For a First Cause of Action**

**The Parties**

1. 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.

2. Plaintiff Board of Managers of the Parc Vendome Condominium  
(the "Board") represents the more than 500 families who own condominium units in the  
Parc Vendome apartment buildings in the County, City and State of New York.

3. Plaintiff Stuart Uram owns real property, where he resides, within the County, City and State of New York.

4. Plaintiff Teri Slater owns real property, where she resides, within the County, City and State of New York.

5. Plaintiff Hilda M. Regier owns real property, where she resides, within the County, City and State of New York.

6. The Board, on behalf of the 500 Parc Vendome families, Landmark West!, on behalf of its members and residents of the community, and the individual plaintiffs are suing as residents of the City of New York (the "City") and as taxpayers who pay real estate tax assessments exceeding \$1,000, to prevent: fraud; collusive transactions; waste of City property and assets; and violations of the New York Constitution, State statutes, the New York City Charter and more than two centuries of common law.

7. Plaintiffs bring this action pursuant to Article VIII, § 1, of the New York State Constitution, Section 383 of the New York City Charter, Section 51 of the General Municipal Law and New York's public trust doctrine.

8. Defendant The City of New York (the "City") is a municipal corporation formed pursuant to the laws of the State of New York, with an office in the County, City and State of New York.

9. Defendant New York City Economic Development Corporation ("EDC") is a local development corporation, established pursuant to Section 1411 of the New York Not-for-Profit Corporation Law, with an office in the County, City and State of New York.

### **The Factual Basis of This Action**

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

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

12. When the Gallery thereafter closed, Huntington Hartford transferred the Building to Fairleigh Dickinson University, which operated it as the New York Cultural Center. In 1977, Gulf & Western Industries, Inc., which occupied the building across Columbus Circle, 1 Central Park West, purchased the Building, taking title in the name of Gulf & Western Foundation.

13. Finally, in 1980, Gulf & Western donated the Building, expressly to serve as the City's "principal public facility for visitors' services and cultural affairs and for no other purpose."

14. In connection with the donation, a resolution was presented to the then Board of Estimate and adopted, on February 21, 1980, which approved the "Mayor's acceptance, on behalf of the City, of a gift of Two Columbus Circle substantially in accordance with [the following terms and conditions, among others]:

(1) the Building shall be used `solely by the City as its principal public facility for visitors' services and cultural affairs', pursuant to which it shall contain a visitors' information center, certain other public areas and the City's cultural affairs agency. . . . " [*Emphasis added*]

15. In or around 1996, Viacom, Inc. (the successor to Gulf & Western), conveyed to EDC certain reverter rights retained at the time of the donation of Two Columbus Circle.

16. However, nothing in that agreement or the 1996 conveyance changed the terms under which the Board of Estimate authorized the Mayor to accept the donation of Two Columbus Circle on behalf of the City.

17. The City initially complied with the restrictions on the use of the Building, operating it as the home of the City's Department of Cultural Affairs and the City Convention and Visitor Bureau until 1998.

18. In March 2000, EDC issued a "Request for Proposals" ("RFP") for the sale of the Building with the requirement that "the purchase price will be paid in full at closing".

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

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

21. Both the City and EDC refused to disclose the terms of the transfer to EDC or the terms of the transfer to MAD. EDC required all bidders to execute a confidentiality agreement and claimed that the RFP process was exempt from the disclosure requirement of the Freedom of Information Law, Article 6 of the Public Officers Law.

22. 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.

### **The Proposed Sweetheart Deal for MAD**

23. On August 24, 2004, in connection with a meeting of the Manhattan Borough Board scheduled to consider the sale, EDC finally issued a partial description of the financial terms of the sale:

The purchase price for the property is \$17,050,000. The purchaser price is expected to be paid as following.

\$2 million in cash and  
\$15.05 million payable pursuant to a note having the following terms:

\$4 million is to be paid in four equal annual installments of principal only commencing on the first anniversary of the closing and thereafter on the second, third and fourth anniversaries of the closing. The 4 million will not bear interest.

The remaining principal will bear interest at 6% per annum commencing on the closing date until the fourth anniversary of the closing and at approximately 6.16% per annum thereafter. (Interest will not be payable during the first four years of the note. Accrued but unpaid interest will bear interest at the rate of 6% per annum

during the first four years of the note and at approximately 6.16% per annum thereafter.) The \$11,050,000 of principal and the interest accrued during the first four years of the note will be amortized over a period of 11 years, and payable in annual installments on the first through fifteenth anniversary of the closing.

If the renovation of the building on the Property is completed and the Museum's new home on the Property is open to the public within 24 months from the start of construction, (which date may be extended if an event of force majeure occurs), the \$11.05 million principal portion of the note will be reduced to \$9.05 million as of the closing. [*Emphasis added*]

24. At best, this is a "sweetheart" deal. At worst, it was the type of collusive, fraudulent and illegal transaction which characterized the years when the "Tweed Ring" controlled the City, the very reason why public competitive bidding requirements and other protections thereafter were adopted.

25. As noted, the RFP expressly required that the purchase price be "paid in full at closing". Yet, the sweetheart deal approved for MAD requires that only \$2 million -- 12% -- of the purchase price be paid at closing.

26. The next \$4 million will be paid by issuance of a five-year, no interest, note.

27. Finally, no interest will be paid on the remaining \$ 13 million during the first four years and the maximum interest rate will be 6.16%, well below market.

28. To demonstrate that the "sale" is really a give-away, the City's 2005 capital budget appropriated \$2 million for MAD -- the same amount that MAD is scheduled to pay to the City.

29. In addition, MAD will receive \$75,000 under the City's expense budget.

30. The payment due from MAD for 2006 is \$1 million. Not coincidentally, that is the exact amount allocated by the City's 2006 budget for MAD.

31. In other words, the City is giving MAD the money to buy the Building.

32. Putting it another way, the City is receiving nothing for this valuable property.

33. Finally, the terms provide for waiving \$2 million of the claimed \$17.05 million sale price.

34. Adding to the appearance, if not the reality, of favoritism and cronyism, at least two of the City's elected officials -- City Council Speaker Gifford Miller and Borough President C. Virginia Fields -- serve as members of MAD's Board of Directors.

35. Instead of recusing themselves, both officials voted to approve the sale to MAD. In fact, Borough President Fields, who early and vocally endorsed MAD's bid, twice approved the sale to MAD and refused to reschedule a Borough Board meeting to review the sale even though she had violated the legal requirements for advance notice of the meeting.

36. Article VIII, § 1, of the New York Constitution provides:

No . . . city . . . shall give or loan any money or property to or in aid of any individual, or private corporation or association, . . . nor shall any . . . city . . . give or loan its credit to or in aid of any individual or public or private corporation or association. . . .

37. The City's proposed "sale" of the Building to MAD at below market terms, the cash subsidies to be given by the City to MAD and the extension of credit to MAD to pay for the Building violate Article VIII, § 1, of the New York Constitution.

38. Lacking any other adequate remedy, Plaintiffs seek declaratory and injunctive relief from this Court to prevent the proposed sale of the Building.

**As And For A Second Cause Of Action**

39. Plaintiffs repeat all prior allegations.

40. Section 383 of the New York City Charter (the "Charter") provides:

The rights of the city in and to its water front . . . and all other public places are hereby declared to be inalienable. . . .

41. Section 384 of the Charter generally requires open competitive bidding for the sale of City property.

42. To avoid this requirement and to further their intent to make a secret sale to a favored buyer, the City structured the transaction as a sale to EDC and a sale by EDC to MAD to come within an exception to open public bidding provided by Section 384(b)(4) of the Charter.

43. Section 384(b)(4) of the Charter expressly may not be employed for the sale of "inalienable property or any interest therein".

44. Thus, the City's effort to avoid the salutary purposes of Sections 383 and 384 of the Charter must fail.

45. Lacking any other adequate remedy, Plaintiffs seek declaratory and injunctive relief from this Court to prevent the proposed sale of the Building.

**As And For A Third Cause Of Action**

46. Plaintiffs repeat all prior allegations.

47. New York's common law long has applied and upheld the rule that a municipality, which takes title to property for public use, thereafter holds the property in trust for the public and may not convey it without authorization by the state legislature.

48. The City accepted the gift of the Building expressly for public use and thereafter held it for public use.

49. The City has not sought or obtained authorization from the state legislature to sell the Building and has no right to do so.

50. Lacking any other adequate remedy, Plaintiffs seek declaratory and injunctive relief from this Court to prevent the proposed sale of the Building.

WHEREFORE, a judgment should be granted:

- (1) Declaring that Defendants' actions in authorizing the proposed sale of the Building are null and void and without force or effect;
- (2) Enjoining the proposed sale of the Building; and
- (3) Granting to Plaintiffs such other and further relief as is appropriate.

Dated: New York, New York  
March 16, 2005

MARCUS ROSENBERG & DIAMOND LLP  
*Attorneys for Plaintiffs*

By: \_\_\_\_\_  
David Rosenberg  
488 Madison Avenue  
New York, New York 10022  
(212) 755-7500