

Landmark ruling near

POST APR 28 1977

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ALBANY--The arguments were repeated once again yesterday—the Penn Central contending that it should be able to do as it pleased with Grand Central Terminal, and the city's landmarks commission saying it shouldn't.

This time they were made in the Court of Appeals, which heard oral arguments as the eight-year-long battle over the terminal's fate neared its judicial completion.

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The state's highest court is expected to rule soon on whether the bankrupt Penn Central, which owns the terminal, has the right to alter or demolish parts of it

to make way for a 59-story skyscraper.

To do so, it would need permission to ignore hands-off orders from the city's Landmarks Preservation Commission.

Chief Court of Appeals Judge Charles Breitel asked if the case wasn't "distinguished" from previous landmark challenges because the property owner "is a public utility" which already "benefits from heavy public subsidy?"

And, he asked further, "Isn't the railroad, though privately owned" actually "less than a private enterprise?"

John Wood, of the prestigi-

ous law firm of Dewey, Ballentine, Bushby, Palmer and Wood, which represents the railroad, had already started arguing—as he has maintained throughout the long and complicated suit—that the refusal to allow Penn Central to build a 59-story office tower above the landmark station was a "deprivation of exceedingly substantial" property rights and thus the taking of property without just compensation.

The Penn Central proposal turned down by the Landmarks Commission was to partially demolish the facade of the 1913 Beaux Arts structure to create the skyscraper.

'ONLY ISSUE'

"This is a genuine attempt to preserve the terminal and all of its best features," Wood argued, referring to the terminal's soaring interior. But the proposal, he argued, would at least ease the economic burden that the terminal places on the already bankrupt railroad.

In response, Leonard Koerner, staff attorney for the city's corporation counsel, insisted that "the only issue is if Penn-Central is capable of earning a reasonable return," on the terminal building without altering it. They have "failed to prove an economic loss," he added.

The city has maintained all along, as Koerner did yesterday, that a property owner is not necessarily entitled to make the most profitable use of his property if it's already turning a lesser profit.

In December of 1975 the Appellate Division upheld the city, reversing a lower court decision in Penn Central's favor.