SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE
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STEPHAN BRANDER, FRANK CARBONE
and VINCENT FERRI, INDEX NO.

Plaintiffs,

vs.

COUNTY OF ORANGE AND STEVE NEUHAUS, COUNTY
EXECUTIVE, LEIGH BENTON,

Defendants.
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MEMORANDUM OF LAW
IN SUPPORT OF ORDER TO SHOW CAUSE
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

The Orange County Government Center is unique – it is not simply an edifice of municipal functionality like most other municipalities' central government offices; it is also a landmark of true historical, architectural and public significance. Designed in the 1960s by the renowned Paul Rudolf, the former Dean of the Yale School of Design and Architecture and founding member of the major modern school of architecture known as "brutalism," the Government Center was completed in 1970 and is generally considered one of Rudolf's greatest achievements. In 2012, the New York State Historic Preservation Office ("SHPO") deemed the structure eligible for inclusion in the National Register of Historic Places.

But after years of neglect and the destructive forces of Hurricane Irene in the late summer of 2011, the County Executive unilaterally and indefinitely closed the Government Center, sending the County government into diaspora and launching a still-ongoing era of uncertainty and virulent debate. Now – three-and-a-half years later – in contravention of public sentiment and the Legislature's repeated and express desire to preserve the essential features of the building, defendants are poised to demolish the building, stripping it down to its guts, and to erect a new structure beyond the scope of anything previously approved by the Legislature and of the approved SEQRA review. This plan is the culmination of years of waste and public corruption, including collusion between politicians and interested parties. And, the executive proceeds with this plan despite the presentation by another distinguished architect, Gene Kaufman, of another far less costly and viable alternative. [1]

Plaintiffs have commenced an action under Section 51 of New York General Municipal Law seeking to enjoin Defendants' conduct and the resulting public waste that will result and

[1] Plaintiffs' counsel does not and has never represented Mr. Kaufman or his firm.

hereby bring on this emergency application to temporarily and preliminarily enjoin Defendants from demolishing any feature or division of the unitary Government Center, its imminent intended course of action, pending resolution of its claims.

Since Plaintiffs can demonstrate that they are likely to succeed on the merits of their claims, that the destruction of the Government Center and commitment to a significantly more expensive and less beneficial redevelopment plan will irreparably harm them absent such relief and that the balance of equities tips in their favor, the relief they seek, respectfully, should be granted.

STATEMENT OF FACTS

A. Overview of the Orange County Government Center.

The Orange County Government Center (the "Government Center") was planned and designed by renowned architect Paul Rudolf in the late 1960s and completed in 1970.[2] It is comprised of three sections, or divisions – divisions I and II consisting primarily of County administrative and office space and division III consisting primarily of the County's courts.

According to the World Monuments Fund:

> The Orange County Government Center is considered one of Paul Rudolph's greatest achievements. Completed in 1970, the structure stands as a testament to the era of late modernism, when civil architecture was forging new avenues in design and constructions. Its striking brutalist style exterior is characterized by massive, textured concrete blocks and large expanses of glass. The three-winged, three story building creates complex interiors that divide administrative, judicial and other governmental functions. Natural light bathes the space through clerestory windows among 87 multi-level roofs.

[2] The cited materials are enumerated in the Verified Complaint which has exhibits which substantiate the allegations made therein.

The building internalized important principles of energy conservation and versatility widely recognized by American architects since its design and the design of like buildings in this country and around the world.

B. The closing of the Government Center, early issues and proposals for resolution.

Since 2002, then County Executive Ed Diana and his administration long-neglected the Government Center's long-known maintenance needs and Diana had long expressed his desire to close, demolish and the replace the building. On September 8, 2011, following the major rain event commonly known as Hurricane Irene, Diana unilaterally and indefinitely closed the Government Center and announced his plan to replace it with a $136 million dollar 330,000 square foot structure.

Diana's proposal immediately faced strong criticism and opposition from the public, the press and many County legislators. The opposition cited the administration's exaggerated reports of the rain damage to the building, overestimated cost estimates to renovate and, of course, the architectural and historical significance of the building.. In addition, in December 2011, the New York State Office of Court Administration ("OCA"), which excoriated the County for the negative impact its indecisiveness and delay was having on its court system, noted that division III could be repaired and made operational for less than $400,000.

The first public meeting to discuss the issue of the Government Center was not held until late February 2012, and by then the Legislature had not yet commissioned or received any study on the building's façade or structure that would help it decide what to do. The remainder of 2012 was filled with robust public debate, with the County Executive and his administration favoring demolition and redevelopment and most of the taxpaying public (including Plaintiffs) and many county legislators favoring renovation.

On or about December 2012, after receiving nine proposals for the project, the County Legislature approved the hiring of three firms to conduct an "envelope study" of the Government Center's exterior structure [primarily its roof and walls]. One of the firms selected was Clark Patterson Lee ("CPL").

C. The Legislature votes to renovate the Government Center.

After studies and cost estimates received throughout 2012 demonstrated that renovating the Government Center would be far less expensive than the County Executive and his administration represented, in February 2013 the County Legislature voted by a margin of 15-6 to approve a $10 million bond resolution explicitly for the purpose of renovating the Government Center and not to demolish any part of it.

In mid-March 2013, the Legislature began accepting bids to execute on its renovation proposal. By March 25, 2013, the County had received eleven architectural engineering proposals and four construction management proposals; one of the architectural/design bidders was CPL, which was already engaged in conducting the envelope study for the County.

D. Using his political power and influence, Benton seeks to put demolition back on the table.

In late April 2013, CPL and its collaborators issued their report, which suggested that it would cost $60 million to renovate the government center, an estimate far greater than what had been previously thought and which, as the County's newspaper of record – the *Times Herald Record* – reported on June 29, 2013 appeared grossly inflated. Indeed, these estimates were also belied by the results of a similar renovation project of another Rudolf building in September 2012 at the University of Massachusetts completed by designLAB Architects for a total cost of about $40 million. Coincidentally, County Executive Diana, who by now had gone through three

proposals for demolition and reconstruction, had recently announced a new plan estimated to cost about $68 million.

Thereafter, based on CPL's inflated cost estimates for renovation and Diana's latest proposal, County Legislator Leigh Benton, who was then chair of the powerful Physical Services and Ways and Means Committees, publically announced his opposition to renovation and sought to have the Legislature reconsider demolition and new construction.

In June 2013 Benton led an ad hoc "building committee," which selected CPL, designLAB Architects and JMZ Architects and Planners on a 90-day $650,000 contract to design three alternatives for the Government Center: one for complete renovation, one for demolition of division II and one for demolition of divisions I and II. The committee also selected Holt Construction for the construction management contract. Many legislators on the Physical Services Committee and in the full Legislature took strong opposition to Benton's conduct, which they believed contravened the Legislature's February 2013 vote to renovate. As they expressed it, the focus of the project should have been on minimizing the cost and maximizing the value of a renovation project instead of putting demolition and new construction – a proposal the legislature had previously rejected – back on the table.

Meanwhile, as 2013 was an election year and Mr. Diana's last year in office. He had previously made clear that he did not want the government ever again to step into the government center and, as County Executive, he stalled in executing the contract with the three firms, taking the position that the 90-day period did not begin until the contract was executed and, thus, hoping to stall long enough for the election to occur and the results to provide sufficient legislative support to scrap the idea of renovation entirely and support his plan for

demolition and new construction. Finally, on September 24, 2013, after much public outcry, the County executed the contract with the three firms.

E. CPL hires Benton and interested parties make significant campaign contributions.

In or about November 2013, unbeknownst to the public or the County Legislature as a whole, Benton, a former jeweler with no prior construction or architectural experience, agreed to accept employment with CPL commencing January 1, 2014. At the same time, Benton chaired the committee that was considering CPL's proposals for the Government Center and, despite County ethics laws requiring him to do so, Benton failed to disclose this inherent conflict of interest to his colleagues or to recuse himself from consideration of CPL's proposals. Troublingly, Benton did advise both the legislature's legal counsel and at least four other legislators of his conflict, but none of them revealed the blatant ethical violation.

At the same, as reported in the *Times Herald-Record*, CPL contributed $550 to Benton's re-election campaign and $2,500 to Steven Neuhaus' campaign for County Executive, "shortly before the start of a new law which would disqualify [it] for future contracts if it gave the County Executive more than $1,000 a year." And, as reported by the *Times Herald-Record* on October 9, 2013, Jack Holt, CEO of Holt Construction, which had recently landed the construction management contract for the Government Center and a long-time Diana contributor, donated $4,000 to the Neuhaus campaign. In addition, on October 8, 2013, two engineering firms that had recently championed Diana's inflated renovation figures – Fusco and Fellenzer – held a fundraiser for Neuhaus. All told, during the 2013 election cycle, Neuhaus received at least $86,000 in campaign donations from engineers, attorneys, unions and contractors who had an interest in implementing the most expensive proposal for the Government Center.

Benton's employment with CPL was not disclosed to the public until February 2014, which, as explained below, was months after he participated in key legislative discussions and votes that would ultimately benefit CPL. In April 2014, the County Ethics Board concluded that Benton's conduct violated County ethics laws and in December of that same year, announced that it had fined him $1,000 for his transgression.

F. Tainted by Benton's conflict of interest, the Legislature adopts redevelopment plan inuring to CPL's and other interested parties' benefit.

Throughout the summer and fall 2013, Benton's ad hoc committee engaged in secretive discussion with the team of design firms to develop proposals for redevelopment of the Government Center. On November 25, 2013, the Physical Services Committee convened to review three options – dubbed options AB, BB and C – developed through these secretive meetings. Then, on December 9, 2013, the Physical Services and Ways and Means Committees – both chaired by Benton – considered two proposals. The more expensive option, known as BB+, had a total cost estimate of $67 million and called for partial renovation of the structure, but also the demolition of division II and the construction of a new 27,500 square foot building. The less expensive option, known as AB, had a total cost estimate of $63.1 million and contemplated renovating the entire structure without demolishing division II and construction of a 27,500 square foot building.

Since option AB was less expensive and was more consistent with the full Legislature's February 2013 vote to renovate, and demolish any part of the building, several committee members favored it. But, following Benton's lead, the PSC voted 5-2 for the more expensive option BB+. The full legislature followed suit three days later.

At a joint meeting held on April 21, 2014, the Physical Services and Ways and Means

Committees voted for a $67 million bonding to implement option BB+ and for the County to be the lead agency for SEQRA. On May 1, 2014, the full legislature approved a $77 million boding for BB+ and passed a SEQRA resolution, which, in part, contemplated a memorandum of understanding with SHPO for the preservation of the essential historic and architectural elements of the original Rudolf design. To date, this memorandum of understanding has not been developed.

G. A new proposal emerges – sale, preservation and new construction.

In light of the Legislature's approval of a plan that would demolish division II, in May 2014, Gene Kaufman, an accomplished New York City-based architect, publically proposed purchasing the Government Center, preserving its essential features, including its exterior façade and all three of its divisions, and converting the building into an Arts Center, which would house limited living space for working artists and additional studio space for other practicing artists. Kaufman also proposed to restore the courts, comprised of division III, and build a new government center for the County on property associated with the same site.

At the same time FEMA, which was involved because of federal grant money provided the County for purposes of restoring the Government Center, and SHPO, which was involved because of the historical preservation issues raised by the building's iconic status, publicly indicated that they likely would not approve or endorse a plan that destroyed essential features of the original Rudolf design.

In light of the new proposal and the Federal and State objections to BB+, in May 2014, Neuhaus publically endorsed selling the Government Center and constructing a new 150,000 square foot building a 30,000 square foot addition to the courts. As quoted in a May 25, 2014 newspaper article, Neuhaus stated: "Once we heard about this SHPO thing, all the professionals

involved said, you know, this thing's going to leak when you cut the ribbon on this in two years. I said, "What?" And they said, by the way the parking lot will flood every rain storm. And, in the wintertime, you're going to have to salt and sand it every day. It's going to be a skating rink." The new county executive also publicly stated: "I think that the legislature has had it. I think the BB+ option, in my opinion right now, from talking to both sides, is done. I think there's more support to sell the thing."

On July 14, 2014, the County published an RFP for new construction and, by August 4, 2014, had received six proposals. But, by then, the County discovered that it could use its FEMA funds for other purposes and, without any federal involvement in the project, SHPO would have no involvement. Accordingly, with the regulatory obstacles to BB+ eliminated Neuhaus cancelled the RFP and did not open the bids.

Meanwhile, on July 28, 2014, the Physical Services Committee, no longer chaired by Benton, discussed and adopted an RFP for the sale of the Government Center, which included a provision expressing the committee's desire that any purchaser would agree to preserve the building's essential features. Then, in early October 2014, the full Legislature approved an RFP for the sale of the Government Center for at least $4.5 million and the construction of a new facility on the same site. On October 31, 2014, the county published the RFP, which solicited bids by December 5, 2014, and, in early December, the Legislature adopted a local law authorizing the County to review and accept bids under the RFP.

The County received two responses to the RFP, one of which was a formal bid from Gene Kaufman, which, like his May 2014 public proposal, contemplated no demolition, but rather the renovation of the entire Rudolf building and conversion to an arts center. He proposed to pay $5 million to purchase the Government Center (greater than the $4.5 million floor of the

RFP) and estimated the cost of constructing the new government center building at $50 million, to be bonded by the County. His proposal also promised to expeditiously complete renovations of the court system as required by OCA.

By contrast to CPL's BB+ plan, Kaufman's plan saves $25 million, exclusive of savings from interest incurred by the greater capital needs of the CPL project, preserves all essential features of the Rudolf building with no demolition and stimulates local the local economy and culture through the arts center, thereby also generating additional tax revenue. .

H. Neuhaus forecloses the sale option and proceeds with an unapproved plan.

But having supported w new construction alternative and explained the significant downside of the government re-using the government center, after Kaufman submitted his proposal, Neuhaus vetoed the local law authorizing consideration thereof and, thus, precluded the County from engaging in any discussions or negotiations with Kaufman. He did so at the same time he was widely claiming that the County had a substantial operating deficit for 2014 and beyond and after he had publically proclaimed his opposition to the BB+ plan because of the considerable risks that plan would entail. Moreover, the BB+ proposal added substantially to the County's projected deficit in the budget's out years, by, for example $16 million in Fiscal Year 2018.

Following his veto, having previously estimated demolition costs under the BB+ plan of $3.8 million, the County received only demolition bids for $7.4 million and $7.6 million respectively, almost double the initial estimate.

On March 5, 2015, the full Legislature convened and, though this meeting presented its last opportunity to consider overriding Neuhaus's veto and, thus, restoring the County's ability to simply consider the Kaufman plan and engage in further discussion with him, the matter of

override was not included on the legislative agenda nor presented to the floor for consideration. In light of this, legislator Roseanne Sullivan sought consent to introduce a resolution terminating the County's contract with CPL.

The resolution recited the bases for termination: CPL had illegally hired the Chair of the Committee considering its proposal; CPL had missed submission dates and was dilatory in its completion of project-related tasks; CPL's partners, designLAB and JMZ, had both resigned the job citing serious, unspecified ethical lapses by CPL; CPL's cost estimates for demolition were widely inaccurate, foreshadowing significant cost overruns for the project as a whole; CPLR and the County Executive had made significant changes to the project without legislative approval, including increasing the projected office space from 180,000 to 205,000 square feet, raising the height of the proposed addition from 45 to over 50 feet, significantly altering the design so as to remove the defining exterior walls of the building, which also substantially increased the scope of demolition in a manner not contemplated by the approved SEQRA review, and failing to update SEQRA to address the aforementioned significant changes in project design. But Legislative Chair Steve Brecia would not allow Sullivan to read the resolution and legislator Simmons refused to consent to its consideration; ultimately, the Legislature voted 13-7 not to allow consideration of the resolution by the full body.

With the Kaufman plan thwarted, Neuhaus has now decided to proceed with a plan that differs materially from the BB+ proposal approved by the Legislature in February 2013. Specifically, the new plan includes 25,000 additional square feet of construction beyond the 180,000 approved under BB+ and a proposed height in excess of 50 feet, as opposed to the 45 feet approved under BB+. The new plan also fails to preserve the building's unique exterior walls/facade and essential architectural features of the Rudolf design, in contravention of both

the BB+ plan and the Legislature's stated desire. Significantly, the new plan would leave only about 15% of the original building, namely its foundation, columns, beams and floor slabs. In addition, the County, as lead agency under SEQRA, has not conducted a new review to consider the impacts of these material changes to the design and plan, changes that are significantly outside the scope of the approved SEQRA for the BB+design. These include much increased demolition activity, with attendant air and noise pollution impacts.

In light of Defendants' *ulta vires* and otherwise illegal, collusive and fraudulent conduct, Plaintiffs, as taxpayers, now bring this action under Section 51 of New York General Municipal Law to enjoin the Defendants from demolishing the Rudolf Government Center and prevent the extensive waste and injury to public funds, property and interests that will certainly flow from Defendants' conduct.

ARGUMENT

Plaintiffs' application for a preliminary injunction enjoining Defendants from demolishing any portion of the Government Center should be granted and, in light of the immediately imminent threat, a temporary restraining order similarly enjoining Defendants should issue pending resolution of this application.

A preliminary injunction is warranted to maintain the status quo pending resolution of the underlying claims where the movants can demonstrate that (1) they are likely to succeed on the merits of their claim(s); (2) they will suffer irreparable harm absent interim relief and (3) a balancing of the equities tilts in their favor. See Doe v. Axelrod, 73 N.Y. 748, 750 (1988); N.Y. C.P.L.R. § 6301. And, "[w]here, as here, the denial of injunctive relief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of

success on the merits should be reduced." State v. City of New York, 275 A.D.2d 740. 741 (2d Dep't. 2000). Plaintiffs meet this standard and entitled to the injunction.

Point I

Plaintiffs are likely to succeed on the merits of their GML § 51 claims because largely undisputed facts demonstrate that Defendants' proposed demolition and construction project is ultra vires and the result of corrupt and collusive conduct, significantly imperils the public interest and results in substantial public waste.

Plaintiffs' complaint pleads four causes of action under Section 51 of New York General Municipal Law. That statute provides, in pertinent part:

> All officers, agents, commissioners and other persons acting, or who have acted, for and on behalf of any county . . . may be prosecuted, and an action may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to, or to restore and make good, any property funds or estate of such county . . . . In case the waste or injury complained of consists in any board, officer or agent in any county . . . , by collusion or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands, or expenses, or any item or part thereof against or by such county . . . the court may, in its discretion, prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part . . . .

N.Y. Gen. Mun. L. § 51. To succeed on a claim under this statute, a plaintiff must demonstrate either (1) waste or injury to public funds or property, or (2), when no such waste or injury is involved, both (a) an illegal, fraudulent or corrupt official act; and (b) that such act "imperil[s] the public interests or [is] calculated to work public injury or produce some public mischief." Matter of Korn v. Gulotta, 72 N.Y.2d 363, 371-72 (1988); Long Island Pine Barrens Soc'y., Inc.

v. Count of Suffolk, 122 A.D.3d 688, 690 (2d Dep't. 2014). Here, Plaintiffs can demonstrate both substantial waste as well as illegal conduct imperiling the public interest.

First, Neuhaus's veto of the RFP law, and the Legislature's subsequent failure to override that veto or, in the alternative, to cancel CPL's contract, constitutes public waste. Indeed, those acts prohibited the County from entertaining the Kaufman proposal – or engaging in discussions with Kaufman – and, instead, committed the County to a redevelopment plan that, at once, costs about $40 million more than the Kaufman proposal (thus wasting those public funds) and contravenes the public's expressed desire (and the Legislature's previously stated desire) to preserve an architectural and historical landmark, that is the Rudolph Government Center. Moreover, Defendants' current plan does not entail the same types of economic and cultural benefits that can be realized under the Kaufman plan – namely, a new arts center the attending economic stimulus and tax revenue generation. In sum, the County's conduct wastes millions in taxpayer dollars, destroys an iconic public institution and stifles local economic and cultural grown. Such waste must be prevented.

And if demonstration of such significant public waste were not enough, the record demonstrates that this waste is the result of the collusive and corrupt practices of those involved. Indeed, Benton engaged in the legislative process that selected and championed CPL despite his being employed by that very same entity at the time he was doing so. The County Ethics Board found that this conduct violated County ethics laws. Moreover, during this campaign for County Executive in 2013, Neuhaus received tens of thousands in donations, as well as other support, from parties interested directly and indirectly interested in the selection of the most expensive option for redeveloping the Government Center. So influenced, Neuhaus vetoed the Legislature's duly-enacted local law authorization negotiations with Kaufman for the sale of the Government

Center (the objectively far superior option) because Kaufman represented a distinct and outside interest, not beholden to these campaign contributions.

In short, the receipt of such largess by both Benton and Neuhaus tainted the County's decision-making process, represents collusion between those who would benefit from the construction of the most costly alternative available and the County Executive's irrational and flat-out refusal to even discuss the Kaufman proposal with its proponent.

In addition, the consequence of this waste has been publically recognized by Neuhaus – in May 2014, he publically stated that implementing Plan BB+ would not resolve long-standing leaks at the Government Center and continue to subject the County to potential litigation from persons adversely affected by mold and other weather-related conditions – making more irrational his refusal to negotiate with Kaufman. In light of the substantial [if varying] projected budget deficits Neuhaus has widely circulated and greater burden to the County of carrying the debt service thereof, as compared with the considerably less expensive Kaufman plan, Defendant's current plan, which also destroys a historically and publically significant landmark, commits substantial waste of public recourses without any rational basis.

Second, the current CPL plan is beyond the scope of any plan authorized by the County Legislature and is beyond the scope of the previously authorized SEQRA review. Under the County's Charter, only the Legislature may approve appropriations, a budget and capital projects and incur indebtedness. See Orange County Charter § 2.02(b). Moreover, under New York State Department of Environmental Conservation ("DEC") regulations, absent exceptions not applicable here, "[n]o agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR." 6 N.Y.C.R.R. § 617.3(a). As part of SEQR, the lead agency must complete an Environmental Impact Statement ("EIS"), see Id. § 617.9(a).

The EIS "must assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives. EISs must be analytical and not encyclopedic." Id. § 617.9(b).

Here, when the County Legislature approved the BB+ option in May 2014, it designated the County as lead agency under SEQRA and the County thereafter completed an EIS consistent with the understood scope of the BB+ plan. That review was required to review a myriad of factors pertaining to the actual proposal the County intended to implement, not another, larger proposal. 6 NYCRR 617.11©. The negative declaration here is final, not tentative or subject to alteration, since the decision maker arrived at a "definitive position on the issue" Patel v. Bd. of Trustees of Inc. Village of Muttontown, 115 A.D.3d 862, 864 982 N.Y.S.2d 142 (2d Dept 2014), Matter of Gordon v. Rush, 100 NY2d 236, 242 (2003) and the decisional body has not prepared a supplemental review. An EIS must "fully evaluate the potential environmental effects, assess mitigation measures and consider alternatives to the proposed action." Matter of Coca-Cola Bottling Co. of N.Y. v. Bd. of Estimate of City of N.Y., 72 N.Y. 672, 690 (1988).

As explained above, the plan here reviewed contemplated demolition of division II and did not include demolition of the exterior walls or façade, the latter being a huge undertaking ijn light of the 1 foot thick concrete walls which comprise the exterior wall on this substantial edifice. That plan also called for new construction of only 180,000 square feet with a maximum height of 45 feet.

However, the current CPL plan, which Neuhaus seeks imminently to implement, deviates substantially from the BB+ plan – most significantly, it calls for demolition of all but the columns, beams and floor slabs of divisions I and II, including the exterior walls and façade,

increases the square footage of the combined renovation and new construction to 205,000 square feet and the maximum height to 50 feet.

Of note, under the approved EIS for BB+, the County represented that demolition would yield only 4,400 tons of "structure elements," but this tonnage equates to that expected from demolition of division II and does not account for the removal of the one foot thick concrete façade which graces the entire structure and which current plans intend to remove en mass from the building. Thus, the approved EIS does not adequately assess the potential environmental impact of such an expended project, or of the increased construction or height of the new building planned. Wickham, an accomplished architect, has explained that significant air and noise pollution will accompany the projected demolition, but, the SEQRA long form does not acknowledge these and ignores the scope of the current project.

The current CPL plan is simply different – and much larger in scope – than the approved BB+ plan. And the Legislature has never approved the scope of this capital project or the appropriations or indebtedness necessary therefor and, as lead agency under SEQRA, has never completed an EIS for this current plan. As such, the County Executive may not now proceed with demolition, or any other construction activities and doing so would be illegal and ultra vires. See 6 N.Y.C.R.R. § 617.3(a); Orange County Charter § 2.02(b).

In addition, if the County is not enjoined from undertaking the illegal action it intends to take – demolition and construction without proper Legislative approval or environmental review – the result will be the destruction of an historical, architectural landmark of extraordinary public significance. Such a result surely inures to the detriment of the public and imperils the public interest. Likewise, such conduct will forever foreclose the possibility of rekindling discussions with Kaufman or entertaining any proposal for the sale of the Government Center – a much less

expensive and economically and culturally more beneficial option – thus also imperiling the public interest and wasting tens of millions of dollars of taxpayer funds.

Finally, even if overall scope of the current CPL plan were with within the general scope of the BB+ project and EIS approved by the Legislature, which it is not, it is clear that the extent and cost of demolition under the current plan is beyond that scope. Indeed, whereas BB+ contemplated demolition of only division II and preservation of the exterior walls and façade of the building, the current CPL plan calls for demolition of the entire concrete exterior of the structure.

Moreover, the two lowest bids for this demolition are almost double what the Legislature approved for demolition costs when it approved the BB+ option. And, as noted, the potential environmental impact of this expanded demolition has never been studied. Thus, regardless of any other aspect of the current proposal, it is clear that the County Executive's unilateral demolition of the Government Center at an unapproved and unappropriated cost of twice that originally approved, is *ultra vires* and illegal. And, if not enjoined from engaging in such demolition, the same public waste and detriment to the public interest cited above will ensue.

In the end the facts here are similar to those involved in Orth-O-Vision, Inc. v. City of New York, 101 Misc. 2d 987 (Sup.Ct. N.Y. Cty. Mar. 1979). There, the plaintiff, an unsuccessful applicant for a franchise to provide cable television services in Queens County, brought a Section 51 action to enjoin the City's grant of the franchise to another applicant. Id. In granting the plaintiff a preliminary injunction, the court agreed with the plaintiff's argument that the franchise proposed to be granted to the successful applicant so materially differed from that originally petitioned for under the applicable regulatory scheme, that there was no legal basis to grant the new, and materially different, franchise. Id. at 993-97. And, since the result of granting

the illegal franchise "would permit the opening and use of the city streets without proper authority, and, as such, would constitute a trespass to city property and a public nuisance," the harm was cognizable under Section 51 and redressable in a taxpayer suit thereunder. Id. at 991. Accordingly, the court found that the plaintiff was likely to succeed on the merits of its section 51 claim and, consequently, enjoined the grant of the franchise.

Similarly, here, the scope of the current CPL plan exceeds the BB+ plan approved by the Legislature and lacks adequate environmental review and, thus, there is no legal basis for the County Executive to permit any work thereunder. Permitting the planned construction would waste substantial taxpayer funds and destroy a landmark. Accordingly, like in Orth-O-Vision, plaintiffs here are likely to succeed on the merits of their Section 51 claim.

Point II

Plaintiffs will suffer imminent irreparable harm absent the interim relief requested because the intended demolition cannot be undone, will forever destroy the landmark Government Center and will commit the County to a significantly more costly, and otherwise less beneficial, redevelopment plan.

If Defendants are not enjoined from demolishing the Government Center, Plaintiffs will imminently suffer irreparable injury. Most notably, the iconic historical and architectural masterpiece, deemed by SHPO in 2012 to be eligible for inclusion in the National Registry of Historic Places, will be forever significantly altered and this is scheduled, by all accounts, to occur in the month of April 2015, though no date has been publicly set. See, *Montgomery v. State Dept. of Mental Hygiene*, 43 A.D.2d 552 (1st Dep't. 1973) (continuing preliminary injunction enjoining demolition of historic townhouses in Harlem deemed historic landmarks and noting that, "if the houses are demolished, the plaintiffs and the community will suffer

irreparable injury."). Moreover, there exists no adequate legal remedy that would redress this injury. See *DiFabio v. Omnipoint Comms., Inc.*, 66 A.D.3d 635, 636-37 ("Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient.").

In addition to the loss of the physical structure, and the historical and architectural significance that go with it, demolition of Government Center will foreclose the Kaufman Plan and, instead, commit the County to a much more expensive, and otherwise less favorable, redevelopment plan. Indeed, the Kaufman Plan would save the County tens of millions of dollars in costs, stimulate the local economy and culture vis-à-vis the arts center and generate significant tax revenue to benefit the County and is residents. The Plan will also restore the County's court system consistent with OCA's mandates on a much more expedited basis. By contrast, Defendants' current proposed course of action will waste tens of millions of taxpayer dollars, fail to stimulate economic growth and tax revenue and will further delay the restoration of the court system. In short, demolition leads to a wasteful plan that squanders taxpayer and County recourse and imperils the public interest. These injuries are irreparable.

Point III

A balancing of the equities tips in favor of Plaintiffs because the nature of their injury is substantial and irreversible whereas the harm to Defendants is minimal at best and they come to the table with unclean hands.

In balancing the equities, the court must determine if the harm caused to Plaintiffs by the irreparable injury suffered in the absence of injunctive relief is greater than the harm caused to Defendants by imposition of the injunction. See *Nassau Roofing & Sheet Metal, Co., Inc. v. Facilities Development Corp.*, 70 A.D.2d 1021, 1022 (3d Dep't. 1979). As explained above,

demolition of the Government Center will deprive plaintiffs of an historically and architecturally significant public landmark and commit the County to wasteful and onerous redevelopment plan. Thus, in the absence of injunctive relief, Plaintiffs will suffer grave and irreversible injuries.

On the other hand, Defendants will be only minimally burdened by the injunction. Critically, by the very nature of the Plaintiffs' action, and the finding herein that they will likely succeed on the merits, Defendants have no legal basis to act as they intend to do. Accordingly, Defendants will not be burdened at all from being enjoined from engaging in conduct in which they are not currently legally permitted to engage. Moreover, whereas Plaintiffs injuries are irreversible – *i.e.*, once the building is demolished, there is no reviving it – Defendants have means available to achieve the goal prohibited by injunction – *i.e.*, obtain legal authority for their proposed redevelopment plan.

Finally, Defendants come to the table with unclean hands, and so equity to which they might be entitled should be diminished. Indeed, as recounted above, the course that has led to the present situation is awash with corrupt and collusive behavior – from Benton's hidden employment with the very firm that stood to benefit by the actions of the committee he chaired to the corrupting influence of the campaign contributions to Benton and Neuhaus by those who stand to gain financially from the most expensive redevelopment plan.

CONCLUSION

The Orange County Government Center survived one of Mother Nature's most devastating forces. Yet, absent this Court's immediate intervention, the historic and architectural landmark will be forever desecrated with the mere stroke of the County Executive's pen, unlawfully authorizing the bulldozers to roll and committing the County to a redevelopment plan that wastes tens of millions of taxpayer dollars in contrast to the much less expensive and

functionally and logistically superior option currently on the table. As such, temporary and preliminary relief is appropriate and, respectfully, should be granted.

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