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6/29/15 – By fax

Clerk – Motions
Second Department
45 Monroe Place
Brooklyn, New York 11201

Re: **Brander v. County of Orange, 2015-05261**

Dear Sir or Madame,

We represent appellants/movants in the within matter. On Tuesday, June 23, 2015, on notice to County respondents, we presented an Order to Show Cause seeking to enjoin the proposed demolition of the Orange County Government Center in Goshen, New York. The prior day, we received a decision and order from Supreme Court dismissing the Verified Complaint we filed against respondents and noticed our appeal therefrom.

On Tuesday, Justice Maltese refused to temporarily enjoin demolition pending disposition of our motion for preliminary relief safter the County's attorneys represented to the law secretary who heard us that the County was merely completing asbestos removal and would not begin demolition of the entire building façade and one of the three divisions of the building until sometime this week. The law secretary advised us that the Court would expedite the return date on our motion, causing respondents to respond by June 26 and providing us no time for reply. In light of the misrepresentations which characterize the respondents' papers, I feel constrained to write this letter and request leave that it be provided to the members of the Motion panel for their consideration.

1. The County of Orange is fully in charge of the construction project and the demolition. At no time below did any other allegedly interested party seek to intervene in this action. The allegedly necessary parties are all fully aligned with

the County and have no separate or independent juridical interests. Accordingly, the claim that we failed to name necessary parties and that this defeats our likelihood of success on the merits should be rejected. Moreover, to the extent the County or its contractors suffer any actual damage from an unjustified stay of construction [as opposed to a stay of a wasteful and illegal project, as we allege], GML 51 provides for a bond and we have always expressed a readiness to post the same in a reasonable quantum. Petitioners are also prepared to file expedited briefs on the merits of the appeal.

2. Supreme Court made one holding on the merits: that accepting, as the court must do on a motion to dismiss, their allegations as true, appellants failed to make out the waste claim. However, the Verified Complaint does meet the standards for a waste claim in that it avers the following central elements:

[1] the County has chosen a course of action, i.e., demolition of a perfectly "healthy" façade which defines this historic structure and a division which likewise has no structural flaws, which is at least $35,000,000 more costly than the solicited alternative which it had before it, i.e., to sell the building to Kaufman for $5,000,000, which is $500,000 greater than the assessed valuation provided in its RFP by the County itself, and build a new building for approximately $50,000,000, while renovating the Court section of the extant Government Center; [2] County respondents chose this course of action because of political campaign contributions from parties which stand to financially benefit and because of the influence of these contributors on the County Executive who made the decisive choices following his election in November 2013; [3] the Chair of the dominant Physical Services Committee commenced negotiating for employment with the principal vendor which stood to benefit from expanding the project beyond the legislature's intent as voted in February 2013, and then took a position with that vendor in January 2014 and [4] the project approved by the County Legislature in December 2013 and reviewed in the County's Environment Assessment Form [EAF] the following May 1st was NOT the project the County started building earlier this year; indeed, the latter project was 25,000 square feet larger, a floor higher and involved twice as much demolition as was reported and studied in the EAF. As the County implemented the current proposal without a proper environmental review and as this was not known until just two months before initiation of the instant action, petitioners viably demonstrated the illegality of the current project and their entitlement to an injunction.

3. The County claims that County Executive Neuhaus was hands off this project and all relevant decisions were made before he took office. This defies the

allegations of the complaint and is false. Neuhaus stated in May 2014 that the government center could not again reliably serve in that capacity for the County. He then strongly supported an RFP to sell the building. Kaufman responded and proposed buying the building. Neuhaus then reversed field and refused to open the nine received RFP responses. The County legislature then published a second RFP seeking proposals for the re-use of the Government Center. Again, Kaufman responded and posted the one million dollar fee required to submit his proposal to convert the government center to an Arts Center. Neuhaus then vetoed the legislation which would have allowed negotiations with Kaufman and, in its current papers, the County respondents pretend that Kaufman did not make a concrete proposal which stands as an alternative to the demolition of the historic Rudolph building. This is false.

4. Leigh Benton tainted and corrupted the process by which the legislature determined the renovation of the government center. The facts are outlined in the Verified Complaint. In 2012-13, Benton served as Chair of the Physical Services Committee through which any proposal to either renovate, rebuild, sell or reuse the government center had to travel. The following year, he chaired the Ways and Means Committee. The County Ethics Board has already found that Benton misused his office and violated the law when he accepted a job with Clark, Patterson & Lee [CPL], the principal contractor on the Government Center project at the very time when alternatives with very different implications for county taxpayers were before his committee. Benton supported the most expensive proposal, that is, unnecessary demolition of the façade and division 2 and the construction of a new addition. This support occurred long after the legislature had voted [15-6] to renovate the Government Center in February 2013. Benton opposed that vote and spent the next 10 months working behind the scenes with County Executive Diana to thwart this vote and demolish as much of the building as possible and build anew. In so proceeding, Benton was doing the bidding of CPL, with whom he started negotiating for a job BEFORE the Physical Services Committee voted to support BB+, a more expensive hybrid demolition/renovation plan [in December 2013]. The next month, Benton, a jeweler by profession, took a job with CPL as a regional representative, ironically to drum up business for the company.

5. Petitioners will be irreparably harmed if the County is permitted to pursue needless demolition of a perfectly sound and usable façade. The papers we submitted below demonstrate that the County's own experts certified that the façade is in workable condition and does not need to be demolished. Likewise, Division 2 is fully re-usable and need not be demolished. The County projects

wasting more than $7,000,000 in these pursuits. Moreover, as noted, the County has never studied or recognized the environmental consequences of this quantum of demolition, continuing in its revised May 2015 SEQRA EAF to ignore the actual demolition it intends to accomplish. [We note that these issues are not addressed in the Verified Complaint, and a new lawsuit challenging that SEQRA is about to be filed].

6. The County has delayed this project for years, has failed to perform appropriate environmental reviews and wishes away a viable alternative which would save its tax payers tens of millions of dollars and then claims that IT will be irreparably harmed if needless demolition is enjoined. The County's papers never explain why demolition is required and doing so would be impossible as there is no study or recommendation supporting the chosen course. That, more than anything, shows that this course is being undertaken to enrich those with whom the County Executive has colluded, contractors who have donated aplenty to his campaign, but whose interests are unaligned with those of the petitioner/appellants and aggrieved county taxpayers. We further note that, contrary to respondent county's representation, demolition activities appear to be underway, devaluing and de-facing a historic building for no good reason.

For these reasons, the requested relief should enter, an expedited briefing schedule should be set and appellants should be required to post a reasonable bond.

Respectfully,

Michael H. Sussman

cc: Mr. LoBiondo and Ms. Kim, counsel of record for respondents

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Date: 6/29/15

Pages: 5

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From: Sussman & Watkins

Re: Bromler v. County of Orange, 2015-05261

COMMENTS:

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