

At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of September, 2015

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.
-----X

SAVE THE VIEW NOW, BY ITS PRESIDENT
STEVEN GUTERMAN, STEVEN GUTERMAN,
DANIELA GIOSEFFI, AND CHRISTINA PAGE,

Plaintiffs,

- against -

Index No.: 504785/15

BROOKLYN BRIDGE PARK CORPORATION, NEW
YORK STATE URBAN DEVELOPMENT
CORPORATION D/B/A EMPIRE STATE
DEVELOPMENT CORPORATION, BROOKLYN
BRIDGE PARK DEVELOPMENT CORPORATION,
CITY OF NEW YORK, TOLL BROTHERS REAL
ESTATE, INC., AND STARWOOD MORTGAGE
CAPITAL. LLC,

Defendants.
-----X

The following papers numbered 1 to 17 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/Motion to Dismiss Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1, 2 <u>3, 4</u>
Opposing Affidavits (Affirmations) <u>(Cross Motion)</u> _____	<u>5 - 9</u>
Reply Affidavits (Affirmations) _____	<u>10, 11</u>
_____ Affidavit (Affirmation) _____	<u>12, 13</u>
Other Papers <u>Memoranda of Law</u> _____	<u>14 - 17</u>

Upon the extensive and well-prepared papers submitted both in connection with these motions to dismiss and cross motion for renewal, leave to amend and preliminary injunction and upon oral argument:

THE LEASES

Plaintiffs contend that because “(newly discovered) leases demonstrate that the government defendants never adopted the interpretation set out in the response to comments on the RFP...” the statute of limitations never commenced to run. This court is unconvinced that the leases would need to have specifically referenced or incorporated the response to comments on the RFP for the statute of limitations to have commenced to run. Indeed, plaintiffs have failed to demonstrate any connection between the provisions of these leases and the expiration of the statute of limitations, as determined in the prior decision and order of this court.

THE BULKHEADS

Documents submitted by all parties clearly demonstrate that the bulkheads contain only stairs, elevators, mechanicals and reasonable access thereto. Rooftop areas designated for food preparation and other activities are outside of the bulkheads and are only illustrative

of potential rooftop activity. Such activity does not impact the structure or fixtures of the building itself.

Having previously raised numerous objections to the bulkheads, plaintiffs now contend that the hotel's bulkhead is impermissively massive under the provisions of the New York City Zoning Resolution. Plaintiff contends that these buildings, although adjacent, cannot be combined for purposes of computing maximum bulkhead volume because they are constructed on separate zoning lots.

Defendants' response is that the Zoning Resolution was only used as general guidance and need not have been followed in every technical particular because the organic documents which created the Brooklyn Bridge Park explicitly overrode the Zoning Resolution itself.

In any event, this court need not determine whether defendants violated an alleged obligation to strictly comply with the Zoning Resolution because the aforementioned expiration of the statute of limitations has rendered this dispute academic.

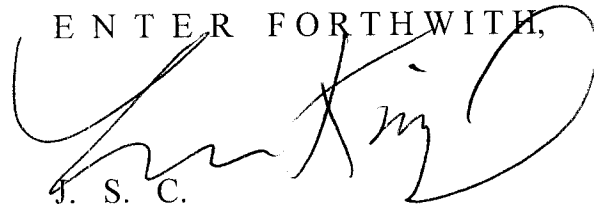
STIPULATIONS

Defendants have now stipulated in open court to remove those portions of the design which provide for a rooftop canopy and for ladders extending above the bulkheads.

CONCLUSION

Accordingly, in the discretion of the court, renewal is granted. Upon renewal, the court adheres to the prior decision and order, and the branches of the cross motion for a preliminary injunction and for leave to amend are denied. Defendants' motion to dismiss on statute of limitations grounds are granted and the action is dismissed. Defendants remain, however, bound by their stipulation not to add a rooftop canopy or ladders extending above the bulkheads.

The foregoing constitutes the decision, order and judgment of this court.

ENTER FORTHWITH,

J. S. C.
Justice Lawrence Knipel