

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

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In the Matter of the Application of

The Emergency Coalition Organization to Save Washington Square Park;
Village Independent Democrats; Cooper Square Mutual Housing
Association; Washington Place Block Association; Ronald Podolsky,
James Henry Brennan, President of the Servalli Playground; Keen Berger, Supporting Affidavit.
Democratic Party District Leader, Karen Kramer, Jessie McNabb, West
Village Committee, Inc.; Elizabeth Nichols; Robert Nichols; Margie
Reubin individually and as founder of Mobility Impaired Artists at
Westbeth, and Luther Harris,

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Petitioners,

For an Order and Judgment Pursuant to Article 78, CPLR,

-against-

THE CITY OF NEW YORK; MICHAEL BLOOMBERG, Mayor of
the City of New York; ADRIAN BENEPE, Commissioner of the Department
of Parks and Recreation; ROBERT TIERNEY, Chief Executive officer of
the Respondent The New York City Landmarks Preservation
Commission; EMILY LLOYD, Commissioner of the Department of
Environmental Protection

Respondents.

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STATE OF NEW YORK
COUNTY OF NEW YORK:ss

RONALD PODOLSKY being duly sworn deposes and says:

1. That he is one of the Petitioners herein and also is attorney for the Petitioners and make this affidavit in support of the application of the Petitioners to have a preliminary and permanent injunction issued by this Court to prevent the contemplated project of the Respondents to renovate, redesign Washington Square Park and to provide that any repairs, if in fact they are needed, be done in such a way as to balance the said repairs with the need for unfettered access to the Park.
2. Many of the assertions in the Petition are based on historical research and personal observation of the Petitioners. For example I started visiting Washington Square Park ["the Park"] in 1950 when I attended New York University School of Arts & Sciences and later NYU Law School, both of which are situated on the bordering streets of the Park. During this time and to the present time I have visited the Park, engaged in musical jams where I play the guitar on many spring, summer and fall weekends, and have also visited the Park sometimes midweek and in the winter.
3. I met my wife while playing a guitar on a park bench on the north east corner of the Park and our daughter played on the playground in the north east section of the Park.
4. It is from this personal observation, conversations and recounting of events with others and familiarity with existing conditions that I make this affidavit in support.
5. I know from personal experience that the Park has been and is accessible to thousands of visitors, including tourists, who find the Park a delightful and much needed repast from the tensions and cacophony of New York City; it is a refuge for squirrels and birds; it is a popular

meeting place where important political and cultural discussions and performances are had.

6. In the over fifty years of my observations and knowledge of the Park, no dangerous physical condition respecting the layout of the Park and its structures are apparent which require renovation, destruction, movement or replacement as contemplated in the planned project which is the subject of the Petition.

7. I have never been witness to, nor aware of any outrage or concern that the fountain which presently exists is out of kilter or not centered on the Arch which is at the Southern terminus of Fifth Avenue. Historical research indicates to me that the location of the Fountain with respect to the Arch is not the result of a planning mistake, but rather comports with the Olmsted theory of park design, and that the Arch was placed at its present location by plans believed to have been drawn by the noted architect Sanford White.

8. Over the years I and other Petitioners have seen and have on occasion interacted with all types of people including wheelchair bound individuals who access the Park by ground level multiple entranceways and access the rotunda surrounding the existing depressed fountain by ramps. To the extent that some may argue that the ramps should be more gradual, if in fact they must be made so to comport with the access and comfort of such persons, the ramps can be made more gradual. There appears to be no rational basis to the projected removal of the fountain to another location and placing it and the surrounding area to ground level. Such a prospect would deprive the Park of its current "theater-in-the-round" aspect and usage and deprive the public of an historically important feature of the Park. One organizational Petitioner consists of physically challenged individuals who are familiar with the present layout of the Park and support its present retention.

9. Historical research reveals that the Park was and is a burial ground for various groups of persons including the poor, members of various racial or religious groups, and probable veterans of the Revolutionary War and War of 1812. This observation is based not only on statistical probability but upon the fact that it has been reported that Philadelphia in doing construction on its Washington Square did find the remains of Revolutionary War veterans therein interred. Moreover research indicates that the Common Council of New York assured certain religious leaders of the time that there would be no disturbance of the persons interred in the Park.

10. The contemplated project to which the Petitioners object includes digging up the present fountain which is depressed as a rotunda below ground level, digging a hole centered on the Arch; inserting a fountain thereat. Such project contemplates the use of earth moving equipment, jack hammers, fencing off large areas of the Park for the fountain project and redesign and renovations of other features of the Park.

11. It is believed to be the purpose of various laws and regulations respecting the maintenance and ownership of parks by municipal authorities to preserve the historic, environmental and accessibility features of the park. Petitioners deny that the contemplated renovations and redesign are appropriate, and contend that any real or imagined need for repair be done with due regard to the balance between the project and the accessibility of the public to the Park. If indeed any such repairs are to be done they should be done after October 20 and end before March 1 thereby insuring that maximum access to the Park is insured during peak usage months.

12. I and other Petitioners contend that the fact that the fountain is not centered on the Arch was not the result of a mistake that needs to be corrected, but rather is in full comportment with the Olmsted theory of park design regularly adopted by the predecessors in office of the Respondents not only with respect to Washington Square Park but with respect to Central Park as well. This assertion is based upon research of the history of those parks.

13. It has been reported that the Landmarks Commission in June, 2005 gave its approval for the plan for the project submitted to it by the Respondents of the Parks and Recreation Department and that the Landmarks Commission did approve of it. It is contended that the Landmarks Commission did not adequately consider the historic facts respecting the burial grounds, the assurances of the then City authorities with respect thereto, nor did it inquire sufficiently of the various religious and racial groups of their views respecting the contemplated project. It is contended that the moving of the fountain and its underground pipes and inserting it in a different place is to be prevented by this Court on practical, historical and moral basis.

14. Based upon my personal observation and the observation and experience of other petitioners, the Park is not broke and there is no need to fix it by massive redesign, movement of

structures and removal of trees and squirrels and birds that presently reside therein.

15. To the extent that the Respondents believe that the misalignment of the fountain with the arch, or the asymmetric plazas and pathways, the chess and checker tables, the dog runs or other features of the park are the result of a mistake in planning which should be corrected, Petitioners contend that such belief is misplaced and that the determination complained of to undertake the contemplated project should be annulled.

16. Attached hereto is a copy of authorizations received by some of the organizations which are listed as Petitioners as well as a copy of petition signatures of members of the public who, although not Petitioners in this proceeding, have indicated their opposition to the planned redesign and renovations contemplated by the Respondents and other documents attesting to the merits of the matters contained in the Petition.

17. Attached as well are documents indicating that a private family entity has agreed to provide funds to help underwrite the cost of the project, especially relating to the centering of the fountain with the Arch. The fact that a private moneyed family entity or its members are upset that the fountain is not centered on the Arch is insufficient grounds to dig up the present fountain and its underground pipes, move it to center on the Arch at ground level and to destroy the Olmsted based layout of the Park. Although it is believed that Confucius said: "Where money talks, few men are deaf," that revered observation does not justify acceding to the desire of moneyed persons to move the fountain so they can look through the Arch directly up Fifth Avenue. . More egregiously is the demand set forth in the documents that the fountain not only be moved to comport with this bland desire, but that the Fountain be renamed as that family's name and that plaques be displayed attesting to that demand. Such agreement to rename a public fountain is not appropriate when entered into by public agencies. It is believed that most contributors to a park are content with naming a bench in their honor.

18. It is believed that the Department of Environmental Protection and the environmental impact statement failed to consider the plight of the squirrels, birds and majestic trees and the adverse effect the project would have respecting them. Moreover, since the Olmsted design theory has been and is the appropriately adopted design endorsed by the Respondents' predecessors in office, it is contended that the layout of the plazas, grassy areas, dog runs and fountain are environmental as well as structural features of the Park.

19. Various Petitioners have obtained signed non-judicial petitions from thousands of persons who access the park who have voiced opposition to the planned project, which are available for inspection..

20. A preliminary injunction against starting the contemplated project is sought in that were such work to begin prior to the determination by this Court of the merits of the Petition and this court find merit in it, irreparable harm would be done. It is believed that sufficient assertions of ascertainable fact have been presented upon which this Court in its final decision would result in the permanent relief sought.

BY REASON WHEREOF, it is respectfully requested that this Court issue a preliminary injunction to prevent the Respondents from undertaking the contemplated project until such time that the Court decides the issues on the merits leading to a permanent injunction.

Dated: July 22, 2005.

Respectfully submitted:

Sworn to before me this
22d day of July 2005

Ronald Podolsky

Notary Public State of New York.