

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FOURTH DEPARTMENT

In the Matter of the Application of
MARGARET WOOSTER,
CLAYTON S. "JAY" BURNEY, JR.,
LYNDA K. STEPHENS, and
JAMES E. CARR,

Petitioners-Appellants,

For a Judgment pursuant to CPLR Art. 78 & Sect. 3001

-against-

QUEEN CITY LANDING, LLC,
CITY OF BUFFALO PLANNING BOARD, and
CITY OF BUFFALO COMMON COUNCIL,

Respondents-Respondents.

In the Matter of the Application of
BUFFALO NIAGARA RIVERKEEPER, INC.

Petitioner-Appellant,

For a Judgment pursuant to CPLR Art. 78

-against-

CITY OF BUFFALO, and
QUEEN CITY LANDING, LLC,

Respondents-Respondents.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

I, **Gerald A. Buchheit, Jr.**, being duly sworn, deposes and says the following under
penalty of perjury:

AFFIDAVIT

"WOOSTER PROCEEDING"
Erie Co. Index # I-2016-0096

"RIVERKEEPER PROCEEDING"
Erie Co. Index # 807004-2016

1. I am a manager of Queen City Landing, LLC (“QCL”), a respondent in the above-captioned proceedings.

2. I make this affidavit in opposition to the motion for injunctive relief filed by Petitioners-Appellants in these proceedings.

3. QCL has been exploring redevelopment of 975-1005 Fuhrmann Blvd. in the City of Buffalo (the “Site”) since acquiring it in 2007. We are seeking to construct a 23-story, primarily residential tower on the Site (“Project”).

4. The City of Buffalo (“City”) undertook a thorough review of the proposed Project, carefully studied all potential environmental impacts and issued the necessary approvals to allow the Project to move forward.

5. QCL opposes the Petitioners-Appellants’ request for a preliminary injunction as set forth in the accompanying Memorandum of Law and on the grounds that QCL will suffer substantial economic harm if such relief were granted.

A. Property Background

6. QCL purchased the Site in November 2007, just before the real estate market collapse. The Site is entirely privately owned by QCL.

7. The Site is bordered by the Small Boat Harbor to the south, the former Nanodynamics facility to the north, Lake Erie to the west and Route 5 to the east.

8. Prior to QCL’s purchase, the Site had been used most recently as boat storage, and the primary structure (the former Freezer Queen manufacturing facility, built in 1927) has been largely vacant for roughly 20 years.

9. Since purchasing the Site over eight years ago, QCL has undertaken diligent efforts to investigate and evaluate redevelopment the Site.

B. QCL's Prior Development Efforts of the Site

10. Following the purchase of the Site, QCL's team carefully reviewed several alternatives for its development before arriving at the ultimate vision presented to the Planning Board.

11. Originally, the Property was marketed as corporate offices. QCL prepared office building proposals for HSBC Bank, Catholic Health Systems, and Delaware North. QCL marketed the office building to office space brokers. QCL was not successful.

12. QCL then invested time and money exploring the marketing of the Site as a computer server center. QCL principals attended industry conferences in Dallas, Texas to make contacts and understand that industry. QCL was not successful, primarily because the electrical load infrastructure required was not readily available at the Site.

13. After much investigation, it became apparent that a re-use of the deteriorated concrete structure (which presents a variety of environmental contamination concerns including extensive asbestos contamination) on the Site would not be economically feasible.

C. Present Plans for QCL's Redevelopment of the Site

14. The proposed redevelopment of the Site includes environmental remediation and demolition of the existing 6-story building, construction of a new 23-story residential building ("Tower") with restaurants, fitness area, covered parking ("Garage") for residents and surface parking for visitors and an extension of the public bike path providing waterfront access.

15. The Project will bring a needed mix of private investment, residential development and public access to an industrial /commercial site.

16. There is currently no public access to the waterfront at the Site. The Project will include a bike path, providing public access to the waterfront.

17. The City of Buffalo is currently enjoying a renewal in real estate development, and in particular, residential development. These facts, plus the low interest rate environment, make the decision to build a waterfront residential/mixed use building financially feasible.

18. However, there may be a short window to the residence demand in the area and a short window for low interest rates, which make this redevelopment of the Site possible.

D. Current Status of the Project

19. Attached hereto as **Exhibit A** is a copy of the Project Schedule for commencement of major construction activities, dated November 10, 2016 (the “Schedule”).

20. The Schedule outlines the planned timeframes for the following major activities:

- i. Abatement and Demolition of the Existing Building
- ii. Environmental investigation and remedial efforts under the New York State Department of Environmental Conservation (“NYSDEC”) Brownfields Brownfield Cleanup Program
- iii. Site Work and Foundations Design package at Tower and Garage
- iv. Structural Steel Package at Tower
- v. Balance of Core and Shell Package at Tower
- vi. Balance of Core and Shell Package at Parking Garage

21. Asbestos abatement, a pre-requisite of structural demolition, is 100% complete.

22. As of November 14, 2016, the structural demolition of the existing building is approximately 70% complete. Per the Schedule, demolition is to be completed by the end of December 2016. However, it is estimated that demolition activities will be substantially complete as early as December 1, 2016.

23. Attached as **Exhibit B** is a photograph which fairly and accurately depicts the condition of the building and status of demolition as of November 13, 2016.

24. The activities listed on the Schedule under the headings “Abatement and Demolition of the Existing Building” and “Brownfields Investigation and DEC Approvals” (see Ex. A) do not involve actual construction of the new building. Rather, they relate to preparing the Site for receiving the new building and compliance with Brownfield Program requirements.

25. Groundbreaking for the new construction is scheduled to take place on or about April 17, 2017.

26. Although groundbreaking is not scheduled to take place until April 2017, the procurement of subcontracts, construction materials, components and system packages must take place to provide for sufficient lead time for production.

27. For example, the Structural Steel package for the Project requires a production lead time of approximately four months. The erection of the structural steel (non-foundation) is scheduled to begin on or about March 27, 2017, with requests for bid to be issued at the end of December 2016.

28. Similarly, the Glass package for the Project (referenced on the Schedule as “Shell”) requires a production lead time of approximately four months, with requests for bid to be issued on or about February 27, 2017, and glass installation is scheduled to begin in or about the end of June 2017.

29. If there is an injunction of construction pending the Petitioners-Appellants’ appeals, then QCL will not be able to procure the necessary subcontracts, construction materials and components to keep the Project on schedule.

30. It is imperative that construction commence in the Spring of 2017 to stay on track with critical tasks. One consequence of delay is the risk that the Project will suffer inclement weather impacts at the end of 2017.

31. For example, if the structure is not weathertight (fully enclosed with roof installed) by the time cold weather hits in late 2017, interior construction activities will be negatively impacted. More specifically, finish work and painting are dependent on having enclosed temperature controlled environments – if the building is not enclosed by the time winter arrives these activities will either be delayed or will require temporary winter weather protection measures, both of which will cause QCL to suffer damages for delay.

E. Financial Impact in the Event of Delayed Construction Start

32. If the Project is delayed in the start of construction, QCL will suffer a significant financial impact that would jeopardize its ability to move forward with the proposed redevelopment.

33. In the event that Petitioners-Appellants are granted a preliminary injunction pending their appeals, and thus delaying the start of construction, the financial impact to the Project would be catastrophic.

34. Construction costs for the Project are estimated currently between \$60 million and \$85 million, with construction planned to start in the Spring of 2016.

35. There is a range in construction cost estimates since the new structure is in a design and engineering phase. There are significant decisions to be made on the building foundations, structural steel, finishing materials and operating systems. There are also decisions to be made on the attendant inside elements.

36. Financing an estimated \$75 million over 30 years, the result of a delay on the project will cost \$11,000 per month, \$131,000 per year for 30 years (\$3,930,000 additional interest cost over the mortgage life), for each quarter point rise in interest rates. The U.S. Federal Reserve System is considering such an increase beginning in the fourth quarter 2016.

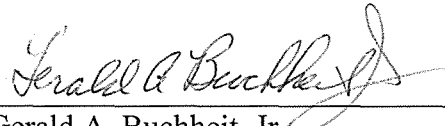
37. The construction consultant and bidding contractors are forecasting a 3.5% annual construction cost increase for the next 2 years. At the low end cost projection of \$60 million, each month of delay would increase project cost by \$175,000 ($\$60,000,000 \times .035 \div 12$). A nine month delay would increase construction cost by \$1,575,000 ($\$175,000 \times 9$).

38. In addition, construction would be delayed due to the uncertainty of a court decision. This uncertainty would cause delay in the ordering of strategic materials with long delivery lead times. Structural steel and the glass exterior packages, discussed above, are custom manufactured and custom fabricated to specifications required. There is no “off the shelf” ordering availability. For these two large lead items, delivery follows four or more months after order. Many other items have two to three month delivery lead times.

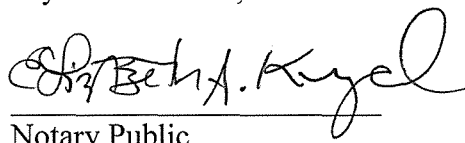
39. QCL would also be impacted by soft-cost increases and other variables, including home-office staffing and overhead costs incurred during idle times, the potential increases for moving construction into inclement and unplanned seasons, the costs for redesign and the public input process, increased competition for subcontractors and workers based on other local projects, opportunity costs for retaining the team and the variable cost of getting staff and consultants reoriented to the Project.

40. In sum, enjoining QCL from proceeding with construction activities on the Project will cause serious harm to QCL, will jeopardize the economic feasibility of the proposed redevelopment, and could cause the entire Project to become non-viable.

41. QCL respectfully requests that this Court deny the Petitioners-Appellants’ motion for a preliminary injunction that would restrain QCL from proceeding with construction of the Project.


Gerald A. Buchheit, Jr.

Sworn to before me this 14th
day of November, 2016.


Notary Public

ELIZABETH A. KRAENGEL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires July 7, 2020

EXHIBIT A

revised 11/10/2016

QUEEN CITY LANDING - PROJECT PLANNING

week of

		7/4/2016	7/11/2016	7/18/2016	7/25/2016	8/1/2016	8/8/2016	8/15/2016	8/22/2016	8/29/2016	9/5/2016	9/12/2016	9/19/2016	9/26/2016	10/3/2016	10/10/2016	10/17/2016	10/24/2016	10/31/2016	11/7/2016	11/14/2016	11/21/2016	11/28/2016	12/5/2016	12/12/2016	12/19/2016	12/26/2016	1/2/2017	1/9/2017	1/16/2017	1/23/2017	1/30/2017	2/6/2017	2/13/2017	2/20/2017	2/27/2017	3/6/2017	3/13/2017	3/20/2017	3/27/2017	4/3/2017	4/10/2017	4/17/2017	4/24/2017	5/1/2017	5/8/2017	5/15/2017			
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from Dan 10/18/16	Brownfields Investigation and DEC Approvals																																																	
	amend investigation plan per DEC comments																																																	
	receive NYSDEC approval of work plan																																																	
	complete investigation and testing																																																	
	complete IRMs (removal of UST and contaminated soil)																																																	
	issue draft RI/IRM results to NYSDEC																																																	
	complete investigation and testing under building																																																	
	issue complete test results to DEC																																																	
	DEC approves cover as remedial measure																																																	
	Tim	Site Work and Foundations Design Package at Tower and Garage																																																
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	Cost consult / Bid Docs Prep																																																	
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EXHIBIT B

