

STATE OF NEW YORK  
SUPREME COURT COUNTY OF KINGS

BROOKLYN HEIGHTS ASSOCIATION, INC., )  
SAVE THE VIEW NOW, by its President Steven )  
Guterman, STEVEN GUTERMAN, and DANIELA )  
GIOSEFFI, )

Plaintiffs, )

- against - )

BROOKLYN BRIDGE PARK CORPORATION, )  
CITY OF NEW YORK, NEW YORK CITY )  
DEPARTMENT OF BUILDINGS, NEW YORK )  
STATE URBAN DEVELOPMENT CORPORATION )  
d/b/a EMPIRE STATE DEVELOPMENT )  
CORPORATION, BROOKLYN BRIDGE PARK )  
DEVELOPMENT CO9RPORATION, TOLL )  
BROTHERS REAL ESTATE, INC., STARWOOD )  
MORTGAGE CAPITAL LLC, and BROOKLYN PIER )  
1 RESIDENTIAL OWNER, L.P., )

Defendants. )

**SUMMONS**

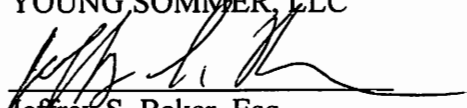
Index No.:

Trial is desired in the County of  
Kings as it is the County in which  
the actions complained of occurred.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an answer to the complaint in this action within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: December 3, 2015

YOUNG SOMMER, LLC  
By:   
Jeffrey S. Baker, Esq.  
Allyson M. Phillips, Esq.  
Attorneys for Plaintiffs  
5 Palisades Drive, Suite 300  
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STATE OF NEW YORK  
SUPREME COURT COUNTY OF KINGS

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BROOKLYN HEIGHTS ASSOCIATION, Inc. , SAVE  
THE VIEW NOW, by its president Steven Guterman,  
STEVEN GUTERMAN, and DANIELA GIOSEFFI,

Plaintiffs,

- against -

BROOKLYN BRIDGE PARK CORPORATION,  
CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF BUILDINGS, NEW YORK  
STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT  
CORPORATION, BROOKLYN BRIDGE PARK  
DEVELOPMENT CORPORATION, TOLL  
BROTHERS REAL ESTATE, INC., STARWOOD  
MORTGAGE CAPITAL LLC, and BROOKLYN PIER  
1 RESIDENTIAL OWNER, L.P.,

Defendants.

**VERIFIED  
COMPLAINT**

Index No.:

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Plaintiffs Brooklyn Heights Association, Inc., Save the View Now, by its president Steve Guterman, Steven Guterman, and Daniela Gioseffi, by their attorneys Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC, as and for their Verified Complaint against City of New York, New York City Department of Buildings, New York State Urban Development Corporation d/b/a Empire State Development Corporation, Brooklyn Bridge Park Development Corporation, Brooklyn Bridge Park Corporation, Toll Brothers Real Estate, Inc., Starwood Mortgage Capital LLC and Brooklyn Pier 1 Residential Owner, L.P., allege as follows:

**INTRODUCTION**

1. This is an action brought pursuant to CPLR § 3001 seeking (a) a declaration that a significant portion of the 4-story building under construction at 130 Furman Street is taller than

the scenic view plane established for the Brooklyn Heights Scenic View District (“SV-1”), in violation of applicable legal requirements; and (b) an order permanently enjoining all defendants from continuing construction on those parts of the building that are taller than the scenic view plane; and (e) an order directing the defendants to remove any parts of the building at 130 Furman Street that are taller than the scenic view plane.

2. The building under construction at 130 Furman Street is one of several buildings being constructed on parcels upland of Pier 1 as part of the larger Brooklyn Bridge Park project which, as currently proposed, encompasses approximately 85-acres consisting of piers, upland, and water areas located along 1.3 miles of waterfront in Brooklyn.

3. The Brooklyn Bridge Park project is divided into five interconnected areas, known as Piers 1 through 6, and is bounded by Jay Street on the north, Atlantic Avenue on the south, Furman Street on the east, and the East River on the west.

4. At issue in this lawsuit is the development of Pier 1 (the “Pier 1 development”) and, specifically, the residential building at 130 Furman Street and a luxury penthouse that is being constructed above the scenic view plane.

### **THE PARTIES**

5. Plaintiff Brooklyn Heights Association, Inc., (“BHA”) is a not-for-profit corporation organized under the laws of New York State with its principal place of business located at 55 Pierrepont Street, Brooklyn, New York 11201. BHA is a prominent and venerable community organization formed in 1910 to preserve the physical characteristics of the Brooklyn Heights neighborhood, and to inform, assist, and advocate for residents and businesses on matters affecting the community. BHA was a driving force behind the creation of the Brooklyn Bridge Park and works to promote public access to open space along the waterfront and the

preservation of scenic views in the Brooklyn Heights Scenic View District (SV-1) as part of its mission. BHA members include business and property owners and residents of Brooklyn Heights.

6. Plaintiff Save the View Now (“STVN”) is an unincorporated association authorized under the laws of New York State with its principal mailing address located at 75 Columbia Heights, Brooklyn, New York 11201. Steven Guterman is the president of STVN. STVN is a community coalition comprised of individuals dedicated to protecting and preserving views of the Brooklyn Bridge and Manhattan Skyline from the Brooklyn Heights Promenade (the “Promenade”), located in Brooklyn Heights, Borough of Brooklyn, Kings County, New York State (“Brooklyn Heights”). STVN members include property owners and residents of Brooklyn Heights and visitors to the Promenade from throughout the world. STVN’s efforts to preserve the views from the Brooklyn Heights Promenade have been supported by the Historic Districts Council and the BHA. STVN currently has 6,964 supporters and its purpose is advocacy for protecting and preserving views of the Brooklyn Bridge and Manhattan Skyline.

7. BHA and STVN bring this suit on behalf of themselves and their members who live, work, and recreate in Brooklyn Heights. These members regularly use private and public lands located in Brooklyn Heights for walking, bicycling, picnicking, photography and quiet contemplation. BHA and STVN members enjoy the views of the Brooklyn Bridge and the Manhattan Skyline from Brooklyn Heights and, specifically, from the Brooklyn Heights Promenade and the neighborhood East of the Park. BHA and STVN members will no longer be able to fully enjoy their use of these private and public lands in the same way if the development of the penthouse at 130 Furman Street is continued within the Brooklyn Heights Scenic View District (SV-1). Development and construction of a luxury penthouse at a height that exceeds the

protected view plane, will irreparably harm opportunities for BHA and STVN members to view the areas protected by the view plane which include the Brooklyn Bridge archway, the South Street Seaport, the Whitehall Ferry Terminal, and the vistas of the Statue of Liberty and Governor's Island.

8. Plaintiff Steven Guterman is an adult and resident of Brooklyn Heights, in the Borough of Brooklyn, New York. Mr. Guterman has lived in Brooklyn for approximately 18 years and is the founder and president of STVN. Mr. Guterman regularly walks along the Brooklyn Heights Promenade and routinely sees and enjoys views of the Brooklyn Bridge and Manhattan skyline. In addition, Mr. Guterman's home is located between Cranberry and Middagh Streets and is approximately one block from the Middagh Street entrance to Squibb Park. Construction of the penthouse at 130 Furman Street within the Brooklyn Heights Scenic View District (SV-1) has had a profound emotional effect on Mr. Guterman as he highly valued the views of the Manhattan skyline and Brooklyn Bridge archway from the Brooklyn Heights Promenade.

9. Plaintiff Daniela Gioseffi is an adult and full-time resident of Brooklyn Heights, in the Borough of Brooklyn, New York. She has lived in Brooklyn Heights for approximately 50 years and is a member of STVN. Ms. Gioseffi walks along the Brooklyn Heights Promenade daily and routinely sees and enjoys views of the Brooklyn Bridge and Manhattan skyline. Ms. Gioseffi is an American Book Award winning author of 16 books of poetry and prose on various issues of cultural and social justice. Ms. Gioseffi created the "First Brooklyn Bridge Poetry Walk" with a grant from the New York State Council for the Arts of the National Endowment for the Arts; this work was featured in local papers, including *New York Magazine* and *The New York Times* and is written up in "A Cultural History of the Brooklyn Bridge," by Dr. Richard

Haw, a Professor of John Jay College of the City University of New York (published by Rutgers University Press, 2005). The “Brooklyn Bridge Poetry Walk” begins at the Montague entrance and heads toward the end of the Brooklyn Heights Promenade near Squibb Park; walkers view the sweeping grace of the Brooklyn Bridge. Construction of the penthouse at 130 Furman Street within the Brooklyn Heights Scenic View District (SV-1) has had a profound emotional effect on Ms. Gioseffi as she highly valued the views from her apartment and from the Brooklyn Heights Promenade, specifically the views she enjoys of the Brooklyn Bridge archway from the Brooklyn Heights Promenade.

10. Defendant City of New York is a municipal corporation organized under the laws of the State of New York, with a principal place of business at City Hall, New York, New York 10007.

11. Defendant New York State Urban Development Corporation (“UDC”), doing business as the Empire State Development Corporation (“ESDC”), is a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation of the State of New York. ESDC is organized and authorized by the New York State Urban Development Corporation Act, McKinney’s Unconsolidated Laws, Title 16, Chapter 24. ESDC’s principal office is located at 633 Third Avenue, New York, New York 10017. Upon information and belief, from the inception of the Park project ESDC has been and continues to be the “lead agency” within the meaning of the State Environmental Quality Review Act, Environmental Conservation Law Article 8 (“SEQRA”).

12. Defendant Brooklyn Bridge Park Development Corporation (“BBPDC”), a subsidiary of ESDC, is a corporate governmental agency organized under the laws of the State of

New York. BBPDC's principal office is located at 633 Third Avenue, New York, New York 10017.

13. Defendant Brooklyn Bridge Park Corporation ("BBPC"), doing business as Brooklyn Bridge Park, is a not-for-profit corporation formed under the New York Not-for-Profit Corporation Law and is wholly owned and/or controlled by the City of New York. BBPC's principal office is located at 334 Furman Street, Brooklyn, New York 11201.

14. Defendant New York City Department of Buildings ("DOB") is a department of the City of New York that is responsible for enforcing the Brooklyn Heights Scenic View District (SV-1) regulations.

15. Upon information and belief, BBPC relies on the DOB to review zoning diagrams for buildings in the Pier 1 development, including the building at 130 Furman Street, for compliance with the Brooklyn Heights Scenic View District (SV-1) regulations.

16. BBPC makes the final decision whether the building at 130 Furman Street is in compliance with the Brooklyn Heights Scenic View District (SV-1) regulations.

17. Upon information and belief, Defendant Toll Brothers Real Estate, Inc., doing business as Toll Brothers, Inc. and/or Toll Brothers City Living ("Toll Brothers"), is a foreign business corporation organized under the laws of the State of Pennsylvania, authorized to conduct business in the State of New York. Toll Brothers' principal office is located at 250 Gibraltar Road, Horsham, Pennsylvania 19044. Toll Brothers' registered agent is CT Corporation System, located at 111 Eighth Avenue, New York, New York 10011.

18. Upon information and belief, Defendant Starwood Mortgage Capital LLC, doing business as Starwood Capital Group ("Starwood"), is a foreign limited liability company organized under the laws of the State of Delaware, authorized to conduct business in the State of

New York. Starwood's principal office is located at 591 West Putnam Avenue, Greenwich, Connecticut 06830. Starwood's registered agent is CT Corporate System, located at 111 Eighth Avenue, New York, New York 10011.

19. Defendant Brooklyn Pier 1 Residential Owner, L.P. ("Brooklyn Pier 1") is the tenant, leaseholder and developer of the building being constructed at 130 Furman Street which is the subject of this action. Upon information and belief, Toll Brothers and Starwood are the owners of Brooklyn Pier 1.

20. Defendants Toll Brothers, Starwood, and Brooklyn Pier 1 are hereinafter referred to collectively as the "Developer".

#### **VENUE**

21. This proceeding is properly venued in Kings County as that is the county in which BBPC maintains its principal offices and is the location where the penthouse at 130 Furman Street is under construction and the development project is taking place.

#### **THE BROOKLYN HEIGHTS SCENIC VIEW DISTRICT (SV-1)**

22. The Brooklyn Heights Scenic View District (SV-1) is a "Special Scenic View District", established pursuant to Section 102-00 of the New York City Zoning Resolution ("Zoning Resolution") to promote and protect public health, safety, and general welfare.

23. The purposes of a Special View District include: (a) to preserve, protect and prevent obstruction of outstanding scenic views as seen from a mapped public park or an esplanade or a mapped public place directly accessible to the public; and (b) to promote the most desirable use of land and direction of building development, to assure the maintenance and enhancement of the aesthetic aspects of scenic views, to conserve the value of land and buildings and to protect the City's tax revenues.



24. The Brooklyn Heights Scenic View District (SV-1) was established in 1974 and extends over an area west of the Brooklyn Heights Promenade.

25. The Brooklyn Heights Scenic View District (SV-1) was established to protect the panoramic view of the lower Manhattan skyline which includes such landmarks as the Brooklyn Bridge archway, the South Street Seaport, the Whitehall Ferry Terminal, and the vistas of the Statue of Liberty and Governor's Island.

26. The regulations set forth in Sections 102-00 to 102-50 of the Zoning Resolution are applicable in the Brooklyn Heights Scenic View District (SV-1).

27. The regulations establish a protected view plane that extends from the Brooklyn Heights Promenade at specified angles in the shape of a fan.

28. No portion of any building or other structure can be constructed to a height that exceeds the protected view plane.

#### **STATUTORY SCHEME FOR PIER 1 DEVELOPMENT**

29. The UDC Act, McKinney's Unconsolidated Laws § 6251 et. seq., is a broad statutory scheme for urban redevelopment.

30. It created the New York State Urban Development Corporation (which operates under the name of Defendant ESDC) for the purpose of undertaking, supervising, and approving urban redevelopment projects, and granted broad powers to the Corporation in undertaking such projects, including the power to override local laws. *See* Unconsolidated Laws § 6266 [UDC Act].

31. The UDC Act is essentially intended to benefit the urban public by applying the forces of economic development to blighted and underutilized areas.

32. It is also authorized to undertake specific categories of projects, of which Land Use Improvement Projects and Civic Projects are relevant to this proceeding. *See Unconsolidated Laws § 6252.*

33. Pursuant to the UDC Act, ESDC is empowered to prepare project plans, known as a “General Project Plan” (“GPP”) and modifications thereof, known as “Modified General Project Plans” (“MGPP”), among other things which govern the development of the specific projects. *See Unconsolidated Laws § 6255 (13).*

34. Any such GPP and/or MGPP must include a required “Findings Statement” and must be filed with ESDC corporate offices and with the clerk of any municipality where a project is located. *See Unconsolidated Laws § 6266 (2)(a), § 6260.*

35. ESDC is required to give notice of and conduct a public hearing prior to adopting a GPP or MGPP. *See Unconsolidated Laws § 6266 (2)(b), (c).*

36. The purpose of the public hearing is to provide opportunity to comment and ESDC must consider any “substantive negative testimony or comment” prior to adopting a proposed GPP or MGPP. *See Unconsolidated Laws § 6266 (2)(d).*

37. When issuing its Findings and adopting a GPP, the ESDC has the authority to override local zoning laws and the local land use approval process.

### **FACTUAL STATEMENT**

#### **A. History of Development of the Pier 1 Development and Brooklyn Bridge Park Project**

38. On or about May 2, 2002, the State of New York and the City entered into a Memorandum of Understanding regarding the Brooklyn Bridge Park Project (the “2002 MOU”). The 2002 MOU set out general principles for the creation, development and operation of the

Brooklyn Bridge Park. The 2002 MOU also provided for the creation of Respondent-Defendant Brooklyn Bridge Park Development Corporation (“BBPDC”), a subsidiary of ESDC.

39. Pursuant to the 2002 MOU, BBPDC is responsible for the development of the Park and is vested with responsibility for adoption of a Master Plan, General Project Plan and Modified General Project Plan(s), approval of contracts valued in excess of \$1,000,000, and approval of agreements with project developers.

40. BBPDC approved and/or adopted a General Project Plan (“GPP”) and Modified General Project Plan (“MGPP”) for the Park in 2006.

41. ESDC approved and/or adopted a GPP and MGPP for the Park in 2006.

42. Subsequent to the adoption of the 2006 MGPP, the BBPC was established by New York City to assume responsibility for the implementation of the MGPP and the operation of the Brooklyn Bridge Park.

43. On or about July 29, 2010, the City, ESDC, BBPDC and BBPC entered into a Project Agreement (the “2010 Project Agreement”) regarding the construction and development of the Park.

44. Under the 2010 Project Agreement, BBPC has “full responsibility and authorization to oversee all planning, construction, maintenance, and operation of the Project, including the ability to .... Make all development and operational decisions regarding the Park Improvements and the Development Projects.” However, “such responsibility and authorization are subject to and shall be exercised in accordance and compliance with the MGPP.”

## **B. Applicable Legal Requirements**

45. Pursuant to the 2002 MOU between the City and State, ESDC through BBPDC acted as lead agency under the State Environmental Quality Review Act (“SEQRA”) NY Environmental Conservation Law Article 8.

46. On or about July 26, 2005, a Draft Environmental Impact Statement (“DEIS”) for the Park Project was issued by BBPDC. The DEIS considered the potential environmental impacts that could result from the proposed GPP.

47. The DEIS stated that the residential building planned for 130 Furman Street (referred to in the DEIS as the “Southern Building” on Parcel B of Pier 1) would be 55 feet in height.

48. The DEIS stated that the building at 130 Furman Street would have to comply with the Brooklyn Heights Scenic View (SV-1) regulations.

49. On or about September 19, 2005, Defendant BBPDC held a public hearing on the DEIS and received written comments through November 2, 2005.

50. During this time period, 146 organizations and individuals provided either oral or written comments.

51. One issue of significant concern to the community was the negative impact that the Pier 1 buildings would have on views from the Brooklyn Heights Promenade.

52. On or about December 15, 2005, after reviewing and considering the comments on the DEIS, a Final Environmental Impact Statement (“FEIS”) was issued by BBPDC. The FEIS established a maximum height of 55 feet for the building at 130 Furman Street and stated no portion of the building could be erected above the scenic view plane established for the Brooklyn Heights Scenic View District (SV-1).

53. The FEIS stated the building at 130 Furman Street would not result in any significant adverse impacts to views, including from the Brooklyn Heights Promenade, because the building would have to comply with the Brooklyn Heights Scenic View District (SV-1) regulations.

54. On or about January 18, 2006, a SEQRA Findings Statement (“SEQRA Findings”) was issued by ESDC.

55. Pursuant to the SEQRA Findings, development of Pier 1 is required to protect the many views from the Brooklyn Heights Promenade, including, but not limited to, the views protected by the Brooklyn Heights Scenic View District (SV-1).

56. The SEQRA Findings specifically state that “The potential locations of new buildings on the project site are severely restricted by the view planes and viewsheds across the site; any new buildings would have to be located so as not to obstruct views of the harbor and the Lower Manhattan skyline from the Brooklyn Heights Promenade....” .

57. The SEQRA Findings further state that “[t]he Proposed Project would comply with the Special Scenic View District mapped across much of the project site by ensuring that views of the Manhattan skyline from the Brooklyn Heights Promenade would not be obstructed.”

58. The SEQRA Findings are legally binding and prohibit the Developer from constructing a building at 130 Furman Street that is taller than the view plan established for the Brooklyn Heights Scenic View District (SV-1).

59. On or about December 18, 2006, a Modified General Project Plan (the “2006 MGPP”) was adopted by BBPDC.

60. When ESDC adopted the MGPP, it specifically exercised its authority to override the New York City Zoning Resolution and exempt the Pier 1 development from New York City's Uniform Land Use Review Procedure ("ULURP").

61. While ESDC overrode the substantive and procedural requirements of the Zoning Resolution and ULURP, ESDC and BBPC took affirmative action to require compliance with the Brooklyn Heights Scenic View District (SV-1) regulations when it approved the Pier 1 development, including the building at 130 Furman Street.

62. The 2006 MGPP established a maximum height limit of "approximately 55 feet" for the building at 130 Furman Street.

63. The 2006 MGPP requires that the building comply with the "mandated view plane from the Brooklyn Heights Promenade".

64. The MGPP is legally binding and prohibits the Developer from constructing a building at 130 Furman Street that is taller than the view plan established for the Brooklyn Heights Scenic View District (SV-1).

65. On or about June 19, 2012, BBPC entered into a lease agreement with the Developer to construct a residential building at 130 Furman Street.

66. The lease agreement provides that construction of the building at 130 Furman Street must be in accordance with applicable "Legal Requirements" and "Design Guidelines".

67. "Legal Requirements" are defined to include the MGPP and other applicable laws or rules.

68. "Design Guidelines" are defined as the guidelines appended to the Lease as Exhibit C.

69. The Design Guidelines expressly provide: “[t]he maximum height allowed by the MGPP is 100’ on Parcel A and 55’ on Parcel B. Please also note that almost all of Parcel B and a small portion of Parcel A fall within the SV-1 special zoning district, which may further limit the height in those areas”.

70. The lease agreement is legally binding and prohibits the Developer from constructing a building at 130 Furman Street that is taller than the view plan established for the Brooklyn Heights Scenic View District (SV-1).

### **C. BBPC’s Public Statements**

71. BBPC has repeatedly represented in print media and public statements that the building at 130 Furman Street would comply with the Brooklyn Heights Scenic View District (SV-1) regulations and would not exceed the protected scenic view plane.

72. In a December 4, 2014 letter to the editor published in *The Brooklyn Paper*, BBPC President Regina Myer stated that no portion of the building at 130 Furman Street would be allowed to pierce the view plane.

73. In a subsequent letter from BBPC to Plaintiff STVN, BBPC reiterated the building must comply with Brooklyn Heights Scenic View District (SV-1) regulations.

74. The Brooklyn Bridge Park website includes a “Details on Pier 1 Development” statement that provides as follows: “[p]rotection of the view plane has always been a requirement of this project and the Park as a whole”; “[t]he smaller residential building of Pierhouse is largely within SV-1, and the building on that site will fully comply with that restriction”; and “[n]ew buildings will comply with the view plane restrictions”. See <http://www.brooklynbridgepark.org/pages/details-on-pier-1-development-site> (last visited November 25, 2015)

**D. The Building Under Construction at 130 Furman Street Does Not Comply with the Brooklyn Heights Scenic View District (SV-1) and is Being Built to a Height that Exceeds the Protected Scenic View Plane.**

75. The bulk of the building under construction at 130 Furman Street is located within the Brooklyn Heights Scenic View District (SV-1).

76. On or about October 16, 2015, through the office of State Senator Daniel Squadron, STVN filed a complaint with the DOB stating that the building under construction at 130 Furman Street violates the Brooklyn Heights Scenic View District (SV-1) regulations and is being built to a height that exceeds the protected scenic view plane.

77. STVN's complaint to DOB included a surveyor's report which confirmed the wall of the penthouse being constructed at 130 Furman Street encroaches 19.25 ft. inside the northwesterly edge of the protected scenic view plane and the penthouse intrudes upon the Brooklyn Heights Scenic View District (SV-1) scenic view plane for a total area of 381.4 sq. ft. at a height of 11.9 ft. to 12.9 ft.

78. STVN and BHA have requested that BBPC and/or DOB halt construction of the luxury penthouse and any other part of the building at 130 Furman Street that violates the protected scenic view plane.

79. Upon information and belief, various public officials have also requested that BBPC and/or DOB halt construction of the luxury penthouse and any other part of the building at 130 Furman Street that violates the protected scenic view plane.

80. On December 2, 2015, Plaintiff's counsel was verbally notified by a Senior Attorney at the New York City Law Department that DOB would not be taking any action on the complaint. No reason was given and Plaintiff's counsel was informed that there would be no written decision.



81. Upon information and belief, DOB has not provided Senator Squadron's office any explanation as to why it is not taking any action on the complaint.

82. BBPC has not responded to the October 16, 2015 complaint.

83. BBPC, BBPDC and ESDC have a continuing obligation to ensure that the Pier 1 development, including the building at 130 Furman Street, is developed in a manner consistent with applicable legal requirements.

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST DEFENDANTS**

**(For Declaratory and Injunctive Relief)**

84. Plaintiffs repeat and reallege paragraphs 1 through 83 as if fully set forth herein.

85. The Developer is constructing the building at 130 Furman Street in violation of the Brooklyn Heights Scenic View District (SV-1) regulations.

86. The Developer is constructing a luxury penthouse at 130 Furman Street to a height that exceeds the protected scenic view plane.

87. ESDC, BBPDC, BBPC, the City, and DOB are aware that the building at 130 Furman Street violates the Brooklyn Heights Scenic View District (SV-1) regulations.

88. Upon information and belief, ESDC, BBPDC BBPC, the City and DOB do not believe the building at 130 Furman Street violates the Brooklyn Heights Scenic View District (SV-1) regulations and have refused to take any action to halt construction or bring the building into compliance.

89. There is a genuine controversy among the parties as to whether the building at 130 Furman Street is being constructed in violation of applicable legal requirements.

90. If construction proceeds in violation of the Brooklyn Heights Scenic View District (SV-1) regulations, Plaintiffs will suffer irreparable injury.

91. Plaintiffs have no other remedy at law to halt construction, preserve the views from the Promenade and assure compliance with applicable legal requirements.

92. Plaintiffs are entitled to a declaration that the building at 130 Furman Street is being constructed in violation of applicable legal requirements.

93. Plaintiffs are entitled to an order enjoining construction of any portion of the building at 130 Furman Street that violates applicable legal requirements.

WHEREFORE, Plaintiffs respectfully request relief as follows:


- a. Judgment declaring that the building at 130 Furman Street must comply with the Brooklyn Heights Scenic View District (SV-1) regulations;
- b. Judgment declaring that construction of any portion of the subject building, including but not limited to the luxury penthouse under construction at 130 Furman Street, above the protected scenic view plane is illegal and violates applicable legal requirements;
- c. Judgment enjoining construction of any portion of the subject building, including but not limited to the luxury penthouse under construction at 130 Furman Street, that does not comply with the Brooklyn Heights Scenic View District (SV-1) regulations.
- d. Judgment ordering removal of any portion of the building at 130 Furman Street that does not comply with the Brooklyn Heights Scenic View District (SV-1) regulations.
- e. Judgment ordering Defendants BBPC, BBPDC and ESDC, the City and/or DOB to take all action necessary to halt construction at 130 Furman Street that does not comply with the Brooklyn Heights Scenic View District (SV-1) regulations.

- f. Awarding Plaintiffs attorneys' fees, costs and disbursements in this action and such other and further relief that the Court deems just and proper.
- g. No prior application for the relief requested herein has heretofore been made.

Dated: December 3, 2015  
Albany, New York

**YOUNG, SOMMER, WARD, RITZENBERG,  
BAKER & MOORE, LLC**

By: \_\_\_\_\_

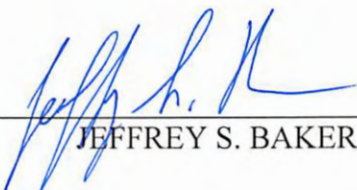
  
Jeffrey S. Baker, Esq.  
Allyson M. Phillips, Esq.  
Attorneys for Plaintiffs  
5 Palisades Drive  
Albany, New York, 12205  
(518) 438-9907

VERIFICATION


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

JEFFREY S. BAKER, ESQ., being duly sworn, deposes and says:

I am a member of the firm of YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE LLC, attorneys for Plaintiffs, in this proceeding and have read the foregoing Summons and Verified Complaint and is familiar with the contents thereof; the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. This verification is made by me because Plaintiffs do not reside in the county in which I maintain an office.

  
\_\_\_\_\_  
JEFFREY S. BAKER

Sworn to before me this  
3<sup>rd</sup> day of December, 2015

  
\_\_\_\_\_  
Notary Public

*Angelina L. Morris*  
Notary Public, State of New York  
Qualified in Erie County  
Certificate Filed in Schenectady County  
My Commission Expires 04/26/18