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Appellate Division, Second Department - Goldstein v. New York State Urban Development Corp.

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SUPREME COURT OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

Goldstein v. New York State Urban Development Corp.[1]
(decided May 12, 2009)

Petitioners, a group of Brooklyn residents and business owners, brought suit to prevent the condemnation of their homes and businesses in conjunction with the Atlantic Yards Redevelopment Project.[2] Claiming that the condemnation violated the Public Use Clause of the Fifth Amendment of the United States Constitution,[3] Petitioners originally filed suit in federal district court.[4] After unsuccessfully seeking relief in federal court, Petitioners commenced a state court proceeding under New York Eminent Domain Procedure Law ("EDPL") section 207.[5] Petitioners argued that the Public Use Clause of the New York Constitution[6] requires a more restrictive standard for the taking of private property than that required by the United States Constitution, and that this higher standard had not been met in the present case.[7] The appellate division rejected Petitioners' claim that the Public Use Clause must be read in a literal fashion so that private property may be taken only when it is held open for use by the general public.[8] Instead, the appellate division held that the condemnation did not violate the New York Constitution because the public benefits anticipated by the completion of the Atlantic Yards Project are not incidental to the benefit that the project's private de-

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[1] *(Goldstein I)*, 879 N.Y.S.2d 524 (App. Div. 2d Dep't 2009), *aff'd*, 921 N.E.2d 164 (N.Y. 2009).

[2] *Id.* at 526.

[3] U.S. CONST. amend. V, states, in pertinent part: "[N]or shall private property be taken for public use, without just compensation."

[4] *Goldstein I*, 879 N.Y.S.2d at 526.

[5] *Id.*

[6] N.Y. CONST. art. I, § 7, states in pertinent part: "Private property shall not be taken for public use without just compensation."

[7] *Goldstein I*, 879 N.Y.S.2d at 526.

[8] *Id.*

veloper will receive.[9]

On December 11, 2003, the Forest City Ratner Companies ("Forest City") announced their plan to redevelop twenty-two acres of land located south of Atlantic Avenue in Brooklyn.[10] Forest City then entered into a partnership with New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC").[11] ESDC is a New York State corporation that has been granted the power to obtain property through eminent domain as part of its involvement in "public and private improvement programs to reinvigorate blighted and economically distressed areas."[12] Forest City and ESDC entered into two Memoranda of Understanding on February 18, 2005 in support of their joint effort to bring the Atlantic Yards Project to fruition.[13]

The most notable aspect of the project is the proposed construction of an arena that would be used as the home for the New Jersey Nets, a professional basketball team owned by Bruce Ratner.[14] In addition to owning the New Jersey Nets, Ratner also serves as the principal for Forest City.[15] The Atlantic Yards Project also includes the creation of a new subway connection to facilitate transportation to the new arena and the construction of sixteen buildings that will provide office space, retail space and between 5,000 and 6,000 residential units, with approximately one-third of the units catering to low- and middle-income families.[16]

Before ESDC began the development of the Atlantic Yards Project, it commissioned a blight study of the project site that was completed in July 2006.[17] Based on the results of the study, the ESDC concluded that "the project site was a substandard or unsanitary area which tended to impair or arrest the sound growth and development of the municipality in which it is situated, and that the project consisted of a plan for the rehabilitation of the area."[18] This finding,

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[9] *Id.*
[10] *Id.* at 527.
[11] *Id.*
[12] *Goldstein I*, 879 N.Y.S.2d at 527.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Goldstein I*, 879 N.Y.S2d at 527.
[18] *Id.* at 528.

made in accordance with EDPL section 204, led to the ESDC's determination that it should use its power to acquire property through eminent domain in order to go forward with the Atlantic Yards Project.[19]

In response, Petitioners filed suit in the United States District Court for the Eastern District of New York claiming that the condemnation violated the Public Use Clause of the Fifth Amendment to the United States Constitution.[20] The Petitioners' main contention was that the public uses set forth by the ESDC were merely pretexts for a private taking since Bruce Ratner would substantially benefit from the completion of the project.[21] The United States District Court dismissed the claims, finding that the facts alleged in the complaint were insufficient to show that the public purposes of the project were simply pretexts for the benefit Forest City would receive from the project.[22] Following this dismissal, Petitioners appealed to the United States Court of Appeals for the Second Circuit.[23] Although sympathetic to the Petitioners' plight, the Second Circuit affirmed the district court's dismissal and concluded that the Petitioners failed to state a claim under the Fifth Amendment.[24]

After the Second Circuit affirmed the district court's decision, Petitioners commenced a proceeding under the EDPL in state court alleging that the condemnation violated the Public Use Clause of the New York Constitution.[25] The Appellate Division, Second Department was thus faced with two arguments to support Petitioners' contention that a violation of the Public Use Clause had occurred.[26] Petitioners' first theory was that the Public Use Clause must be read narrowly so that the State would only be allowed to use its power to take private property for public use "where the condemned property is to be held open for use by all members of the public."[27] Second,

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[19] *Id.*

[20] *Id.*; *see* Goldstein v. Pataki (*Goldstein II*), 488 F. Supp. 2d 254 (E.D.N.Y. 2007).

[21] *Goldstein I*, 879 N.Y.S2d at 528; *see Goldstein II*, 488 F. Supp. 2d at 287-88.

[22] *Goldstein I*, 879 N.Y.S.2d at 529 (citing *Goldstein II*, 488 F. Supp. 2d at 291).

[23] *Id.* (citing Goldstein v. Pataki (*Goldstein III*), 516 F.3d 50 (2d Cir. 2008)).

[24] *Id.* (citing *Goldstein III*, 516 F.3d at 64-65) ("While we can well understand why the affected property owners would take this opportunity to air their complaints, such matters of policy are the province of the elected branches, not this Court.").

[25] *Id.*

[26] *Id.* at 531.

[27] *Goldstein I*, 879 N.Y.S.2d at 531.

Petitioners argued that even if the Public Use Clause is read broadly, the condemnation is still unconstitutional because their properties are not blighted, and it is speculative whether the public will benefit from the project.[28]

With respect to their first argument, Petitioners contended that a narrow interpretation of the Public Use Clause should be followed since this conforms to the intent of the framers of the New York Constitution and the early case law interpreting this clause.[29] The broader view of the Public Use Clause, which permits the taking of private property for the purpose of economic development, is a relatively new view in New York and based on federal law precedent, according to Petitioners.[30] The appellate division disagreed with Petitioners, citing New York case law which showed that New York had discarded the literal interpretation of public use long before the Supreme Court decided *Kelo v. City of New London* in 2005.[31]

The Appellate Division, Second Department went on to state that Petitioners' interpretation of the New York Constitution is completely contradictory to EDPL section 207, which is the authority that gave ESDC the power to condemn the property in the first place.[32] Instead, the court noted that the more expansive view of public use was codified in 1977 when the New York State Legislature enacted the EDPL to unify the necessary procedures for eminent domain.[33]

After rejecting Petitioners' first argument, the appellate division then addressed their second theory, which was that even if the court adopted a broader interpretation of "public use" the condemnation was still unconstitutional.[34] The appellate division disagreed with this contention, stating that although Petitioners' property may not be blighted, fifty-one out of seventy-three of the parcels that make up the project site show signs of blighted conditions, including vacant lots and above average crime rates.[35] The court held that the

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[28] *Id.* at 533.

[29] *Id.* at 531-32.

[30] *Id.* at 532 (citing Kelo v. City of New London, 545 U.S. 469, 480 (2005)).

[31] *Id.* at 533 (explaining that the Court of Appeals of New York abandoned its narrow view of public use in New York City Hous. Auth. v. Muller, 1 N.E.2d 153 (N.Y. 1936)).

[32] *Goldstein I*, 879 N.Y.S.2d at 533 (citing N.Y. EM. DOM. PROC. LAW § 207(c)(4) (McKinney 2009)).

[33] *Id.*

[34] *Id.*

[35] *Id.* at 534.

blight study provided a proper basis for deeming the land substandard.[36] This finding was important, as New York has long held that where "land is found to be substandard, its taking for urban renewal is for a public purpose."[37] The appellate division further held that Petitioners' argument that the public may not benefit from the project does not preclude it from being classified as a "public purpose" since the argument was speculative in nature.[38]

Finally, Petitioners asserted that even if the condemnation serves a public use, there was still a violation of the New York Constitution since the public benefit was a mere pretext for conferring a private benefit on Forest City and its principal, Bruce Ratner.[39] The court rejected this argument and concluded that so long as the public would benefit from the proposed project, the fact that private entities may also benefit is irrelevant for eminent domain purposes.[40] Thus, the appellate division held that the proposed taking did not violate the New York State Constitution.[41]

The Takings Clause of the Fifth Amendment to the United States Constitution places two conditions on the taking of private property through eminent domain: "[T]he taking must be for a 'public use' and 'just compensation' must be paid to the owner."[42] The public use element has been applied to the states through the Fourteenth Amendment.[43] The scope of this requirement, which was at issue in *Goldstein*, has been defined by three Supreme Court cases.[44] In *Berman v. Parker*, the Supreme Court considered the constitutionality of the District of Columbia Redevelopment Act of 1945, under which the appellant's property had been condemned.[45] The statute allowed District of Columbia Land Agency to use whatever means necessary to protect the public from conditions that were considered "injurious

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[36] *Id.* (citing Jackson v. New York State Urban Dev. Co., 494 N.E.2d 429, 441 (N.Y. 1986); Yonkers Cmty. Dev. Agency v. Morris, 335 N.E.2d 327, 334 (N.Y. 1975)).

[37] *Goldstein I*, 879 N.Y.S.2d at 534 (quoting *Yonkers*, 335 N.E.2d at 331).

[38] *Id.* at 535.

[39] *Id.*

[40] *Id.* (citing Murray v. LaGuardia, 52 N.E.2d 884, 888 (N.Y. 1943)).

[41] *Id.* at 536.

[42] *Goldstein II*, 488 F. Supp. 2d at 278 (quoting Brown v. Legal Found. of Wash., 538 U.S. 216, 231-32 (2003)).

[43] *Id.*

[44] *See Kelo*, 545 U.S. 469; Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

[45] *Berman*, 348 U.S. at 28.

to the public health, safety, morals, and welfare."[46]

Appellants, who owned a department store on land designated as blighted, brought suit claiming that they owned commercial property, not "slum housing," and that the land was going to be redeveloped for private rather than public use.[47] The Supreme Court rejected this argument, concluding that a Fifth Amendment violation had not occurred and that Appellants' rights would be satisfied once they had received just compensation for the land.[48] The Court explained that the responsibility of determining what the public interest is belongs to Congress and not the judiciary.[49] Thus, the judiciary gives the legislature a great deal of deference in deciding whether the power of eminent domain was exercised for a public purpose.[50]

Furthermore, since the concept of public welfare covers a wide range of values, the legislature is well within its right to determine that an area should be both clean and beautiful.[51] Consequently, the Court held that regardless of whether they agreed with Congress's specific determinations, the property was being taken for a public purpose under the Fifth Amendment.[52] Once it is determined that the land was taken for a public purpose, Congress has the sole discretion to decide the amount of land necessary for a particular project.[53]

In *Hawaii Housing Authority v. Midkiff*, the Supreme Court was faced with the question of whether the Public Use Clause of the Fifth Amendment prevented the State of Hawaii from taking real property from lessors and transferring it to lessees provided the State justly compensated the lessors.[54] The Hawaii Legislature discovered in the mid-1960s that while the State and Federal Governments owned approximately forty-nine percent of the property in the State, another forty-seven percent was concentrated in only seventy-two

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[46] *Id.* at 28-29.

[47] *Id.* at 31.

[48] *Id.* at 36.

[49] *Id.* at 32 ("Subject to specific constitutional limitations, when the legislature has spoken, the public interest had been declared in terms well-nigh conclusive.").

[50] *Berman*, 348 U.S. at 32.

[51] *Id.* at 33.

[52] *Id.* ("If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.").

[53] *Id.* at 235-36 (citing Shoemaker v. United States, 147 U.S. 282, 298 (1893)).

[54] *Midkiff*, 467 U.S. at 231-32.

private landowners.[55] Based on extensive hearings on the matter, the legislature found that the concentration "was responsible for skewing the State's residential fee simple market, inflating land prices, and injuring the public tranquility and welfare."[56]

In an attempt to remedy these problems, the Hawaii Legislature passed the Land Reform Act of 1967, which allowed the government to condemn residential properties and then transfer ownership of the tracts to existing lessees in fee simple.[57] Landowners whose properties had been condemned under the Act brought suit in United States District Court alleging a violation of the Fifth Amendment of the United States Constitution.[58] Their main contention was that the land was not taken for a public purpose; instead the Act was a mere attempt to transfer private property to lessees solely for their private use and benefit.[59] While the district court found the Act constitutional under the Public Use Clause, the Court of Appeals for the Ninth Circuit reversed this decision, agreeing with appellees that the condemnations were nothing more than thinly veiled attempts on the part of the government to benefit private individuals.[60]

On appeal, the Supreme Court noted probable jurisdiction to hear the case.[61] The Court began its analysis by reaffirming its holding in *Berman* that "[t]he 'public use' requirement is . . . coterminous with the scope of a sovereign's police powers."[62] However, this power is not unlimited and when the government takes an individual's property solely for the private benefit of another person without providing for any public purpose, this exercise of power will be unconstitutional even if compensation is paid.[63] To satisfy the constitutional requirement, the legislature need only state a legitimate purpose and use a rational means for exercising its eminent domain power.[64] It is irrelevant whether the statute actually succeeds or fails

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[55] *Id.* at 232.

[56] *Id.*

[57] *Id.* at 233.

[58] *Id.* at 234-35.

[59] *Midkiff*, 467 U.S. at 235.

[60] *Id.*

[61] *Id.* at 236, *prob. juris. noted*, 464 U.S. 932 (1983) ("On applications of HHA and certain private appellants who had intervened below, this Court noted probable jurisdiction.").

[62] *Id.* at 240.

[63] *Id.* at 241 (quoting Thompson v. Consol. Gas Co., 300 U.S. 55, 80 (1937)).

[64] *Midkiff*, 467 U.S. at 242-43.

so long as the State truly believes the legislation would promote a public purpose.[65] Accordingly, the Supreme Court held that the Hawaii Act passed this test since correcting market deficiencies through the redistribution of fee simples was a legitimate and rational exercise of the State's eminent domain power.[66]

Moreover, just because property, which was taken through the exercise of eminent domain, was transferred to private individuals does not necessarily mean that there was only a private use for the taking.[67] Thus, although the Hawaii statute transferred property to private persons, it still furthered the State's goal of correcting the market deficiencies.[68] In this instance, it was unnecessary for the State to take actual possession of the land in order to further the State's goals.[69] It is immaterial that the State did not actually use the property in *Midkiff* since "it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause."[70] While a taking that was purely private would not survive scrutiny, in this case, the Court held that the taking was not purely private since the correction of the market deficiencies was a legitimate public purpose.[71]

In *Kelo v. City of New London*, the Supreme Court examined whether the City of New London's decision to take private property for economic development purposes violated the Public Use Clause of the Fifth Amendment.[72] The City of New London, Connecticut had suffered decades of economic decline, which led a state agency to characterize the city as a "distressed municipality" in 1990.[73] Due to the deteriorating condition of the city, in 1998 state officials decided to enact a program to revitalize the city and in particular the Fort Trumbull area.[74] In support of this goal, the State authorized a 5.35 million dollar bond to be used by the New London Development

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[65] *Id.* at 242.

[66] *Id.* at 243.

[67] *Id.* at 243-44 ("The Court long ago rejected any literal requirement that condemned property be put into use for the general public.").

[68] *Id.* at 244.

[69] *Midkiff*, 467 U.S. at 244.

[70] *Id.*

[71] *Id.* at 245.

[72] *Kelo*, 545 U.S. at 477.

[73] *Id.* at 473.

[74] *Id.*

Corporation ("NLDC") in its plans to revitalize the city.[75]

Petitioners were residents of Fort Trumbull whose properties had been condemned solely because they were located in the proposed project site.[76] There was no evidence that Petitioners' property itself was blighted.[77] Petitioners commenced this action in state court contending that the taking violated the Public Use Clause of the Fifth Amendment.[78] The Supreme Court of Connecticut held that the taking of land for the economic development project did constitute a "public use."[79]

Following in the footsteps of *Berman* and *Midkiff*, the United States Supreme Court noted that legislatures have broad discretion in determining what public needs require the taking of private property through eminent domain.[80] Consequently, the Court had little difficulty concluding that the taking of property satisfied the Public Use Clause since the Connecticut statute specifically sought to improve the economic development of New London.[81] Further, the Court rejected Petitioners' contention that economic development could not be considered a public purpose.[82] While the Court concluded that there was nothing in the Fifth Amendment which prevented the taking of the property, a State is free to restrict its own exercise of eminent domain power.[83]

Just as the term "public use" has been construed broadly under federal law, New York courts have long interpreted the term broadly, finding that there has been a "public use" provided that there

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[75] *Id.*

[76] *Id.* at 475.

[77] *Kelo*, 545 U.S. at 475.

[78] *Id.*

[79] *Id.* at 476.

[80] *Id.* at 483 (For more than a century, our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.").

[81] *Id.* at 484.

[82] *Kelo*, 545 U.S. at 485.

> It would be incongruous to hold that the City's interest in the economic benefits to be derived from the development of the Fort Trumbull area has less of a public character than any of those other interests. Clearly there is no basis for exempting economic development from our traditionally broad understanding of public purpose.

Id.

[83] *Id.* at 489.

has been a public benefit.[84] In *New York City Housing Authority v. Muller*, New York City Housing Authority sought to exercise its power under the Municipal Housing Authorities Law to condemn properties in New York City, which were owned by Muller.[85] The Housing Authority claimed that the land was needed as part of a plan to reconstruct an area of the city that it determined to be unsanitary and contain substandard housing.[86]

The statute at issue in *Muller* authorized a state authority to "plan and carry out projects for the clearing, replanning, and reconstruction of slum areas and the providing of housing accommodations for persons of low income."[87] Following the approach taken by the Supreme Court, the New York Court of Appeals stated that legislative findings concerning the need for such a statute should be afforded considerable deference.[88] This deference stems from the fact that the statute was enacted specifically to deal with public conditions which it was the Legislature's duty to know about.[89] In defining the boundaries of the State's eminent domain powers, the Court of Appeals declared:

> The fundamental purpose of government is to protect the health, safety, and general welfare of the public. . . . Whenever there arises, in the state, a condition of affairs holding a substantial menace to the public health, safety, or general welfare, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it.[90]

Thus, the court appears to have adopted a broad view of the State's power to take private land for the public's benefit.[91]

The New York Court of Appeals found that the slums in New York City were such a menace that the legislature was justified in

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[84] *Muller*, 1 N.E.2d at 156.

[85] *Id.* at 153.

[86] *Id.*

[87] *Id.*

[88] *Id.* at 154 (citing Block v. Hirsh, 256 U.S. 135, 154 (1921); People v. Charles Schweinler Press, 108 N.E. 639, 642 (N.Y. 1915)).

[89] *Muller*, 1 N.E.2d at 154.

[90] *Id.* at 155.

[91] *Goldstein I*, 879 N.Y.S.2d at 532.

seeking to redevelop the area.[92] Moreover, the court rejected the argument that the use was private and not public since only a limited number of people would actually receive the benefit of the redevelopment project.[93] Citing numerous Supreme Court cases, the New York Court of Appeals noted that requiring the entire public to benefit has been abandoned as a test for public use.[94] Therefore, the court found that the redevelopment project served a public use and the taking of private property for this use was in fact valid.[95]

In *Yonkers Community Development Agency v. Morris*, the New York Court of Appeals addressed the question of whether the land that was taken by the Yonkers Community Development Agency was taken for a public use as required by the New York State Constitution and United States Constitution.[96] The plaintiff agency sought an order for the condemnation of land that it wished to use in connection with state and federal legislation passed to remove substandard conditions in the City of Yonkers.[97] In response, the defendants, who were tenants and landowners to be affected by the redevelopment project, claimed that the land was not being taken for a public use since the agency was planning on using the land to expand the Otis Elevator Company plant. [98]

The court began its discussion by noting that urban renewal projects are no longer limited to cleaning up slums as had originally been intended.[99] Instead, urban renewal projects are now understood to include improving "economic underdevelopment and stagnation" since those conditions constitute a large enough threat to the public to be characterized as public uses.[100] Although Otis had a private interest in the redevelopment project, the New York Court of Appeals

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[92] *Muller*, 1 N.E.2d at 155.

[93] *Id.*

[94] *Id.* (citing Mount Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U.S. 30, 32 (1916); Strickley v. Highland Boy Gold Mining Co., 200 U.S. 527, 531 (1906); Rindge Co. v. County of Los Angeles, 262 U.S. 700, 707 (1923); Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 161-62 (1896)).

[95] *Id.* at 156.

[96] 335 N.E.2d 327, 330 (N.Y. 1975).

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.* (citing Cannata v. City of New York, 182 N.E.2d 395, 397 (N.Y. 1962); Kaskel v. Impellitteri, 115 N.E.2d 659, 667 (N.Y. 1953); Murray v. LaGuardia, 52 N.E.2d 884, 889 (N.Y. 1943)).

stated that this did not take away from the public use of the project.[101] Just as was true under federal law, the New York Court of Appeals has also stated that when land is taken for the purpose of protecting "the public safety, public health and public welfare" the State's power to take property through eminent domain is broad.[102]

Since the states are given wide latitude in determining what constitutes a public use, great deference is given to a state agency's determination that an area is blighted and should be redeveloped as part of an urban renewal project.[103] Thus, once an area is found to be blighted, a court may only review this determination on a limited basis.[104] However, the findings made by a state agency are not by themselves determinative and the court must make its own independent determination that the land was taken for public use.[105] In *Morris*, the New York Court of Appeals affirmed the lower courts' decisions that the land had been taken for a constitutionally valid purpose primarily on the basis that the landowners failed to properly raise the issue of the quality of their land.[106] The court concluded by stating that since the landowners' buildings had already been demolished by the time the court heard the case, they were no longer entitled to the relief sought, which had been the retention of their properties.[107]

Given the foregoing discussion, it is unsurprising that the appellate division in *Goldstein* found that there had been no violation of the New York State Constitution for lack of "public use, purpose, or benefit."[108] First, the narrow reading of section 7 that the Petitioners advocated for had long been rejected by the New York Court of Appeals in *Muller*.[109] For the Petitioners to cling to the idea that the entire public must benefit in order to constitute a public use is inconsistent with a decision made by the New York Court of Appeals well before the Supreme Court began to read the Public Use Clause more

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[101] *Morris*, 335 N.E.2d at 331.

[102] *Id.* at 332.

[103] *Id.* (citing *Cannata*, 182 N.E.2d at 399; *Kaskel*, 115 N.E.2d at 661; Denihan Enter. v. O'Dwyer, 99 N.E.2d 235, 238 (N.Y. 1951); *Murray*, 52 N.E.2d at 888).

[104] *Id.*

[105] *Id.* at 333 (citing *Denihan*, 99 N.E.2d at 238).

[106] *Morris*, 335 N.E.2d at 334.

[107] *Id.*

[108] *Goldstein I*, 879 N.Y.S.2d at 536.

[109] *Id.* at 532.

expansively in its decisions from *Berman* through *Kelo*.[110]

The New York Court of Appeals explicitly stated that "[u]se of a proposed structure, facility, or service by everybody and anybody is one of the abandoned universal tests of a public use."[111] Thus, the fact that Bruce Ratner and Forest City may personally benefit from the Atlantic Yards project is not enough for the Petitioners to conclude that the land was not taken for a public use since the project creates new housing, an arena, improvements to public transportation and employment opportunities.[112]

By abandoning the narrow definition of "public use," the New York Court of Appeals paved the way for a broader interpretation of the term.[113] As the court stated in *Muller*, the power of eminent domain can be used whenever a condition poses a "substantial menace to the public health, safety, or general welfare."[114] Since the blight study showed that the Atlantic Yards project site was characterized by "substandard and unsanitary conditions," the ESDC was clearly justified in concluding that the public health of the community was threatened by these conditions.[115] Additionally, the fact that the study showed that there was a higher than average crime rate supports the finding that the public safety of the community was in jeopardy by allowing the area to remain blighted.[116] Hence, the appellate division could reasonably conclude that the land was taken for a "public use" under the broad definition of the term.[117]

Furthermore, the New York Court of Appeals, by applying the broad definition of "public use," has held that in an urban renewal case the term is not limited to the elimination of slums.[118] The broad view thus gives courts a lot of leeway in determining whether or not the public use requirement has been met. In this case, the creation of a new arena, new job opportunities, and new housing easily meets the "public use" requirement under both the United States and New York

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110 *Id.*
111 *Muller*, 1 N.E.2d at 155.
112 *Goldstein I*, 879 N.Y.S.2d at 535.
113 *Id.* at 533.
114 *Muller*, 1 N.E.2d at 155.
115 *Goldstein I*, 879 N.Y.S.2d at 534.
116 *Id.*
117 *Id.*
118 *Id.*

Constitutions.[119]

Finally, since great deference is given to a finding by an agency of the New York State Legislature that designated land is blighted, the Appellate Division Second Department correctly determined that the land in *Goldstein* was taken for a public use.[120] In fact, the burden is on the property owner to prove that no rational relation exists between the proposed taking and a valid public purpose.[121] As the New York Court of Appeals has stated, "If an adequate basis for a determination is shown and the objector cannot show that the determination was without foundation, the agency's determination should be confirmed."[122] Since the ESDC was able to cite numerous public uses, such as creating new job opportunities and new housing, the court correctly determined that the Petitioners failed to meet their burden of proving that the taking did not serve a legitimate public use.[123]

Accordingly, landowners in New York whose property has been condemned by the State can expect to find difficulty in arguing that the land was not taken for a "public use." As noted, "public use" has been interpreted broadly under both the United States and New York Constitutions. This gives state agencies a considerable amount of latitude in finding a legitimate public purpose for the taking. Once the State has determined that the land was taken for a legitimate public use, courts are very hesitant to overturn the legislature's finding and will most often respect this finding unless there is no rational basis for the taking.

Melissa B. Schlactus

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[119] *Id.*

[120] *See Morris*, 335 N.E.2d at 332.

[121] *Goldstein I*, 879 N.Y.S.2d at 534.

[122] *Id.* (quoting Waldo's, Inc. v. Village of Johnson City, 543 N.E.2d 74, 76 (N.Y. 1989) (internal quotations omitted)).

[123] *Id. See also* Kareem Fahim, *After Years of Controversy, Ceremonial Shovels Come Out*, N.Y. TIMES, Mar. 12, 2010, at A18 (stating that after years of litigation, Forest City Ratner has finally broken ground on the Atlantic Yards Project).