

# The Park West Tenant

## NEW YORK STATE COURT OF APPEALS TO HEAR PWV CASE MAY 2ND

### Tenants to Attend

A bus will leave from 382 CPW Thursday morning May 2nd about 9:45 a.m. to arrive at the Court of Appeals in Albany in time for the 2 p.m. oral hearing of the PWV case. Tenants of PWV and of Coliseum Park Apts. (whose case will simultaneously be heard) will fill the 50 available visitors seats in the Court.

### Who Will Speak?

The principal advocates in the case will address the Court and may be asked questions by the judges for 15-30 minutes each:

For the A-G: James D. Morrissey  
For Corp. Counsel: Fay Leoussis  
For Helmsley: Joseph Forstadt  
For Coliseum Park: Joel Specter

Whether the Court will grant leave to speak to the lawyers for the amicus briefs, Eugene Eisner for PWVTA, and Brad Brewer for several New York State tenant organizations, is not yet certain.

### Why Go?

Our homes, our neighborhood, and others throughout the City and State, and possibly other states, stand to be affected by this decision. A full gallery is expected to alert judges to citizen awareness of the legal, policy and political issues.

### Who Will Judge?

The current Court includes:

Name	Party	From
Chief Judge Sol Wachter	R	Nassau
Sr. Assoc. Matthew Jasen	D	Buffalo
Bernard S. Meyer	D	Nassau
Richard D. Simons	R	Oneida
Judith S. Kaye	Appt.	Manhattan
Fritz W. Alexander, II	D	Manhattan

### What Are The Issues?

Two main questions are before the Court:

(1) Does the 40-year agreement between the City of New York and the developer of Park West Village require that the City's Board of Estimate and Planning Commission approve a "change in the project"?

(2) Is the proposed conversion of Park West Village from rental status to condominium ownership the kind of change which requires such approval?

### Previous Decisions Favor Landlord

Two lower courts said "no" to the above questions — supporting the Park West Village Associates (Helmsley) position. Their ruling was based on a specific and narrow interpretation of contract law, and limited the definition of significant "change" only to population density or type of use (commercial, industrial or residential).

The Corporation Counsel and Attorney General challenge this position, noting that the policy intent of the City and Federal Governments in subsidizing the original land clearance and sale for middle income rental housing bear on current contract interpretation. The PWVTA and tenant groups' amicus briefs also stress the broader legal and policy issues bearing on the contract: namely, that a change from rental to condominium will alter the composition of the project and neighborhood, and thus is a significant change which should be ruled on by the Board of Estimate.

Hightlights from the Briefs are provided on page 2.

### How Will The Case Be Decided?

The Court of Appeals will decide the case by a majority of the six (normally seven) members, probably within 3-6 weeks of the hearing, though occasionally there is a delay. Normally the judges draw lots after the hearings to determine who will be in charge of a case, and a collegial process of discussion and decision ensues after the initial writing.

### What Happens Afterward?

A "Yes" decision on the question will mean a change from rental to condo is interpreted as significant and must be ruled on by the Board of Estimate and City Planning Commission. Whether Mr. Helmsley will urge that the matter be placed before these bodies is unknown:

An "interim" decision could send the issue back to the lower courts for reconsideration.

A "No" decision means the Board of Estimate need not rule on the proposed change. Mr. Helmsley could then request the A-G's approval to proceed with the "red herring" conversion stage for 372 and 382 — and perhaps 392 and 400 soon after. Conversion plans conceivably could be headed off once again, however, if the case could be taken to the Federal courts.

Should Mr. Helmsley be permitted to proceed with conversion plans, tenants should be aware that the "red herring" document represents an *initial* set of proposals, not a final offer. At least 4-6 months are required by the Attorney-General's office before the final "black book" may be offered. During that period, the landlord may unilaterally change the terms or tenants may negotiate revisions.

A brief outline of the conversion process is presented in PWVTA's pamphlet, "Issues, Questions and Answers About Conversion". A limited number of copies at 50 cents each are still available from building reps. or from PWVTA, Box 20339, Cathedral Finance Station, New York, NY 10025.

## COMMUNITY CALENDAR

PWVTA Executive Board meets Wednesday, April 24, at 8 p.m. at Trinity Church, 168 W. 100th St.

Community Board #7 meets Tuesday, May 7 at 7:00 p.m. Call the board office 362-4009 for place of meeting.

## Reservation For Court of Appeals Hearing

Please reserve space(s) on the bus to Albany May 2.

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I enclose a check of \$15.00 made payable to PWVTA to cover each fare.

Please mark check: for May 2nd bus trip.

Name(s) \_\_\_\_\_  
(please print)

Address \_\_\_\_\_ Apt. \_\_\_\_\_

Telephone \_\_\_\_\_

Please return this slip and your check as soon as possible to:

784 Apt.-9B

788 Apt.-4-O

792 Apt.-3A

372 Apt.-10P

382 Apt.-19W

392 Apt.-7C

400 Apt.-18S

## SIGNIFICANT DATES

### Late 1982:

PWVTA is alerted to possible conversion plans by warehousing in 372 and 382 and asks Assemblyman Gerald Nadler to look into the terms of the Agreement about PWV between the City and the Federal Govt. under Title I.

### May 1983:

PWV Associates (representing Mr. Helmsley) submits preliminary plans for conversion (the "red herring") to the A-G for filing.

### June 1983:

The A-G refuses to accept the plans without the consent (or a waiver) from both the NYC Board of Estimate and the Planning Commission (based on the 40-year covenant in the Redevelopment Plan).

### July 1983:

PWV Associates begins proceedings to seek judgment directing the A-G to accept plans for filing.

### Sept. 1983:

The Board of Estimate passes a resolution saying the original Agreement was intended to restrict PWV to rental status unless and until the Board consents to the change.

### Feb. 1984:

Judge Martin Evans rules in favor of PWV Associates.

### April 1984:

The A-G and Corporation Counsel appeal Judge Evans decision to the Appellate Division, First Dept.

### May-June 1984:

Mr. Helmsley's attempt to have the "stay" on conversion proceedings lifted while the court case is in progress are denied.

### Sept. 1984:

By a 5-0 vote, the Appellate Court affirms without opinion the order and judgment of Judge Evans in favor of PWV Associates.

### October 1984:

PWVTA submits anti-conversion petitions with 1,400 signatures to the Mayor at a press conference at City Hall. Hundreds of letters are sent by PWV tenants requesting the A-G and the Corporation Counsel to request the right to appeal to the State's highest court, the Court of Appeals.

### November 1984:

The A-G and Corp. Counsel request permission to appeal.

### December 1984:

Permission to appeal is granted.

**May 14-15** — New York State Tenant and Neighborhood Coalition sponsors buses to Albany to assure visible tenant support of Emergency Tenant Protection Act extension. More information to come in the next Newsletter, but save the days if you can!

## HIGHLIGHTS FROM THE BRIEFS

The positions below are summarized from the briefs and represent the differing positions taken by the contenders in the case.

**P** — Petitioner (PWV Associates for Helmsley)

**A** — Appellants (A-G, Corp. Counsel, Amici)

### IS THERE STILL A PUBLIC INTEREST IN PWV?

**P** — The land for PWV was sold at market value in public auction, the project was privately built, and is fully taxpaying. (PWV has paid \$30 million in real estate taxes in the past ten years.)

**A** — The City acquired the PWV site by right of eminent domain. The Federal and City Governments spent \$13 million in site clearance, demolished 338 buildings, displaced 11,200 people and many small businesses, and sold the land for PWV to a private developer at a write-down price of \$1 million plus a \$2 million mortgage *in order to* make available middle income housing. This was done under the 1949 Federal Housing Act's Title I (Slum Clearance and Urban Redevelopment) and as part of the City's Urban Redevelopment Plan.

### DOES THE 40-YEAR COVENANT APPLY?

**P** — The 40-year covenant applicable from the June 1964 PWV completion date requires that Board of Estimate approval be sought (if at all) only for changes in land use and population density — not other changes. Since conversion to condos will not change the multi-family residential nature of PWV, the Board of Estimate need not be consulted.

**A** The 40-year covenant is intended to protect the City's stated intention of (and investment in) providing affordable rental housing to middle income tenants. The proposed changes of ownership from one landlord to multiple apartment owners will change the relationship of owners to tenants; will change the ownership of the land and common areas from one to many owners; will result in individual financing arrangements for each apartment; will change the management to an elected Board of Managers; and may require recapitalization of the building at higher rates. These are certainly changes of significance of the sort that the Board of Estimate should be required to approve before they can be undertaken.

### IS THE PROJECT RESTRICTED TO RENTAL USE?

**P** — There are scattered references to rents and tenants in the documents but these do not add up to a restriction on the type of ownership.

**A** — One of the stated objectives in the City's Plan was to provide housing at the lowest possible rental consistent with sound financial planning. The assumption in the Plan and the calculations used to assure a fair return to the builder were based on rental use, and rejected market-priced co-ops. Had those drawing up the contract wanted to pose alternative arrangements, they could have: they didn't.

### INTERPRETATION OF CONTRACT

**P** — Where the contract is clear, other evidence regarding intent is not admissible. Interpretation should be limited to what the contract says. The contract does not limit the transfer of ownership.

**A** — The contract was drawn up as an instrument of the City's Redevelopment Plan to which it refers and is to be interpreted in light of that Plan's (and Title I's) intent to create affordable rental housing for middle income tenants.

### WHICH CONTRACTS?

**P** — The 1964 five-page revision supercedes all previous contracts and makes no mention of restrictions to rental use.

**A** — The 1964 revision updated certain provisions but did not wipe out the legislative purpose or history. Further, the Planning Commission explicitly stated it stood behind the previous agreements which the 1964 revision amended.

### WOULD PARK WEST VILLAGE CHANGE?

**P** — Since the conversion plan is non-eviction and only two buildings\* are at issue in this case, most of the same people would go on living in PWV. There is no proof to support the notion that neighborhoods change as a result of condo conversion. Besides, New York public policy supports conversion to condominiums.

**A** — There is ample evidence throughout the City that as buildings and neighborhoods convert to condos, the age range, ethnic diversity and numbers of families diminish. Court evidence supports that observation — and the position that a change in type of ownership may be a change in land use. No one denies that costs of living in PWV would increase, and since most of the present residents are middle income — as the project intended — the composition and character of the neighborhood would inevitably change.

\*PWVTA believes that if two go, more will follow.

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\*PWVTA believes that if two go, more will follow.

— Winifred Armstrong

**THE BRIEFS**

PWVTA has obtained copies of the pertinent briefs that will be considered by the Courts. These may be borrowed individually or as a set by interested tenants from Jane Woodbridge, Chairman PWVTA Legal Committee, Apt. 9C, 792 Columbus Avenue, Telephone: 663-7339, and include:

**Park West Village Associates (for Helmsley):**

Joseph L. Forstadt of Stroock, Stroock & Lavan.

**Attorney General of The State of New York:**

James M. Morrissey and Oliver A. Rosengart, Assistant A-G's.

**Corporation Counsel of The City of New York:**

Leonard Koerner and Fay Leoussis.

**Park West Village Tenants Association (Amicus Curiae):**

Eugene Eisner and Elisabeth A. Werby, Eisner & Levy

**Tenant Organizations (Amicus Curiae):**

New York State Tenant and Neighbors Coalition; Metropolitan Council on Housing; Association of Neighborhood and Housing Development (ANHD); and Kips Bay Tenants Association; Bradley R. Brewer,