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2 Court can fashion a remedy on discovery to assist in the
3 resolution of the underlying Article 78 proceeding." So I
4 think that's a crucial point in this case.

5 And I would be happy to address any other questions
6 your Honor may have.

7 THE COURT: That's it for now.

8 MR. LESTER: Thank you.

9 THE COURT: Mr. Leitman Bailey, anything on
10 rebuttal?

11 MR. LEITMAN BAILEY: Only one point that I have.

12 The eight hundred pound guerilla in the room is the
13 freedom of religion. Courts in the United States of America
14 and New York have found that when freedom of religion are
15 involved it gets a higher scrutiny. That the right to
16 prayer where they want to prayer, when they want to prayer
17 is sacrosanct and before you, besides all the other
18 technical issues.

19 THE COURT: I think everybody has agreed, at least
20 for purposes of the argument today, that the use of the
21 building is not at issue in this proceeding. So let's put
22 that aside, all right?

23 Let's try to take that emotion out of it and stay
24 focused on perhaps somewhat, for lack of a better term --
25 let's let the issue of standing -- and I always avoid this
26 because I have trouble saying it -- the disutility of this

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2 conference and whether it's, in fact, xxx police SHEUFR.
3 There we go, I got it out.

4 MR. LEITMAN BAILEY: As far as standing, to
5 conclude -- the petitioner has to have an injury, an injury
6 in fact separate from the public at large. There is no
7 injury. There is no alleged injury. Nothing of any kind.
8 Nothing any Court has ever given, even close to this
9 injury --

10 THE COURT: How is the case different from the
11 Ziemba case? Miss Waters answered that, I believe, in her
12 argument. Do you have any thoughts on that?

13 MR. LEITMAN BAILEY: Any -- in the Ziemba case it
14 was a native American burial ground. And the people in the
15 community were suing who lived nearby, who lived in the
16 community, who lived two blocks away --

17 THE COURT: So you have the issue of proximity.

18 MR. LEITMAN BAILEY: Proximity.

19 THE COURT: You have the issue of it being a burial
20 ground.

21 MR. LEITMAN BAILEY: And we have an interest, we
22 have a harm. Remember, we have a harm. Those beliefs which
23 we have to assume are true, those beliefs by people two
24 blocks away say their spiritual views and religion would be
25 upset and harmed if during the destruction or the demolition
26 something happened to that burial ground.

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2 We don't have that today. Mr. Brown has no
3 interest in this building other than a community center
4 mosque is being built there.

5 He doesn't live in the community. He is not harmed
6 by this. His friends did not die at this building. This
7 building had nothing to do with 9/11 except landing gear may
8 have fallen on it. And if it did, it has been repaired.
9 The building is in the same situation as it was before 9/11.

10 So you go to the building today and you say, what
11 would you this was a building hilt by landing gear on 9/11,
12 you wouldn't be actually able to see that.

13 Thank you, your Honor.

14 THE COURT: Okay. We're going back to what we
15 covered in the first round.

16 MR. LESTER: Your Honor --

17 THE COURT: Hold on, Mr. Lester. You want an
18 opportunity for rebuttal, you can save that until the end.

19 MR. LESTER: All right.

20 MR. LEITMAN BAILEY: As far as the statute of
21 limitations issue, you have 120 days after an Article 78
22 decision in which you are bound to sue.

23 You are required to name the owner of the property.
24 You don't name the owner of the property, you can't -- you
25 can't affect the demolition proceeding. The proceeding must
26 be dismissed because they failed to name the owner of the

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2 property.

3 The owner of the property is on the deed which is a
4 public document. Soho Properties, which was named, is not
5 on any of the ownership documents, only 45 Park Place
6 Partners, LLC.

7 Thank you for your attention, your Honor. Have a
8 good day.

9 THE COURT: All right.

10 Miss Waters.

11 MS. WATERS: Your Honor, as to discovery, the case
12 law is clear discovery is not allowed in Article 78's. The
13 whole issue of FOIL request is a way the petitioner is
14 trying to get around the general rule of discovery not being
15 allowed.

16 The documents, there's nothing in front of this
17 Court. There are no documents, as far as what -- what --
18 what FOIL request was made, what the response was, what
19 appeal was made. None of those on documents are in front of
20 on the Court.

21 The petitioner is testifying about them, but they
22 are not in front of the Court for purposes of this motion
23 because they have not amended their petition to allege any
24 insufficiency. It's just colloquy, your Honor. So all of
25 the FOIL allegations are not properly before the Court.

26 Just in closing, the Court had one question about