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Justice Appears Reluctant to Upset Landmark Agency Ruling on Downtown Building Set for Islamic Center

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The attorney for the developer of a highly controversial proposal to build an Islamic center near Ground Zero yesterday urged a state judge to throw out a suit by a retired New York City firefighter who is seeking to halt the project.

During a hearing before Manhattan Supreme Court Justice Paul Feinman (See Profile), **Adam Leitman Bailey**— who represents developer Sharif El-Gamal; his company, SoHo Properties; and the site's owner, 45 Park Place Partners LLC—argued that Timothy Brown, a 9/11 first responder, had no standing to bring the case.

Mr. Brown sued the city Landmarks Preservation Commission last year, claiming it acted arbitrarily when it failed to grant landmark status to one of the existing structures at the site where Mr. El-Gamal plans to build the center.

But **Mr. Bailey** insisted that Mr. Brown had not been injured by the administrative decision.

"There's a big difference between interest and injury," **Mr. Bailey** told Justice Feinman.

According to the Article 78 petition filed by the American Center for Law and Justice, Mr. Brown is an "American hero" who rushed to Ground Zero in the wake of the terrorist attacks. "Mr. Brown was literally covered in the blood of many of the 9/11 victims, many of whom were his closest friends," a brief filed by Mr. Brown says.

Mr. Brown argues in his brief that 45-47 Park Place, which faces "imminent demolition" by the mosque's developers, "was not simply any other building in Lower Manhattan that was impacted by the 9/11 terrorist attacks," but "suffered a direct hit from a wheel of one of the hijacked planes, which pierced the Building's roof and top stories."

Yesterday, Jack L. Lester, who represents Mr. Brown, compared 45-47 Park Place to buildings at 23-25 Park Place and 311 Broadway that had been landmarked, and argued there was no "rational reason" to distinguish among the three structures.

The landmarks commission "has recently landmarked other individual buildings, including virtual replicas at 23-25 Park Place and 311 Broadway," according to Mr. Brown's brief.

The building at 23-25 was landmarked in 2007 "despite less architecturally significant features and far less historical impact," according to the brief, which also said the Broadway building was granted landmark status in 2010.

Mr. Brown maintained that the events of Sept. 11, 2001, "directly impacted" 45-47 Park Place.

But Justice Feinman asked Mr. Lester whether "every single" one of the buildings impacted by 9/11 should be "forever landmarked."

The judge also appeared reluctant to overrule the determination of the commission, saying the court would defer to its expertise and factual findings.

Judge Feinman also pressed Mr. Lester on the issue of standing.

"How does [Mr. Brown] have an injury in fact?" the judge asked.

"His stake in the controversy stems from who he is" and where he was that day, Mr. Lester replied.

"He certainly has an emotional, a historic, and personal stake in the monuments of that day," he added.

"Interest is not equal to injury... It's not like he went into this building to carry out rescue operations," the judge said.

Mr. Bailey tried to hammer home this point during the hearing.

He applauded Mr. Brown for his rescue efforts and said he thinks about 9/11 "almost every day," but argued that this was not enough to confer standing on the retired firefighter, who no longer lives in New York City.

He told the judge that no bodies or remains had been found at 45-47 Park Place and the damage to the roof caused by the hijacked plane had been repaired.

"There's nothing about 9/11 that's still there," **Mr. Bailey** said.

In addition to arguing that Mr. Brown had no standing, **Mr. Bailey** said the suit should be tossed because Mr. Brown failed to name 45 Park Place Properties LLC, the owner of the building, in the initial complaint.

SoHo Properties Inc., the named defendant, is not on the deed, and all public documents refer to 45 Park as the owner, he told Justice Feinman.

In court papers, **Mr. Bailey** claims that Mr. Brown had until Dec. 3, 2010, to bring a suit against all the necessary parties, and argues that joining 45 Park at this stage "would be a futile gesture because the four-month statute of limitations has now expired."

At the end of the hearing, **Mr. Bailey** made an emotional appeal to the judge, saying the "800 pound gorilla in the room is freedom of religion."

However, Justice Feinman quickly cut **Mr. Bailey** off, reminding him that how the building would be used was not a legal issue in the case.

"Let's try to put that aside and put some of the emotion aside," the judge said.

Post-Hearing Remarks

Outside the courtroom, **Mr. Bailey** told reporters that Mr. Brown had no right to stop Muslims from praying "where they want to pray."

"Freedom of religion will reign," he said.

Mr. Bailey also said the site of the proposed Islamic center was not at Ground Zero.

"The greatest baseball player in the world can't throw a baseball from our building and hit Ground Zero," he said.

However, Brett Joshpe, an attorney from the Center for Law and Justice, said that the "mere fact that this project could be perceived as ideological...is grounds to not go through with" it.

Mr. Joshpe maintained that the landmarks commission was influenced by "political pressure" from Mayor Michael Bloomberg's office.

Mr. Brown said the "one thing I heard in the courtroom that bothered me the most is that this building is not considered Ground Zero."

He said the reason that no remains were found at 45-47 Park Place was because it was never searched for bodies, and said it was "disgusting" that the other side would use that fact to argue that it was not entitled to landmark status.

"That angers me," he said.

Justice Feinman said the parties could expect a ruling in about four weeks.

Virginia Waters of the city Law Department argued on behalf of the landmarks commission.

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