

## Proceedings

1  
2 MR. LESTER: Your Honor, one other point on  
3 standing. The respondents seem to concede that Mr. Brown  
4 falls within the zone of interest. No one is disputing that  
5 he has an interest or lack of interest in the property. I  
6 think they have conceded that.

7 What they are saying is that he does not have an  
8 injury in fact. I think that's their position, he does not  
9 have standing because he does not have an injury in fact.  
10 But isn't that a question itself, isn't that a factual  
11 determination?

12 THE COURT: Standing is always an issue that the  
13 Court determines, that is not something that is ever given  
14 to a trier of facts to determine at trial.

15 MR. LESTER: I understand that. I understand, your  
16 Honor.

17 If you look at all of those cases where there has  
18 been dismissal for lack of injury in fact, you did not have  
19 in any of those cases -- I've looked at all those cases,  
20 certainly not in the case that was recently dismissed by the  
21 Appellate Division that was brought by the preservation  
22 group -- you never had an allegation in any of those cases  
23 that you had an individual connected to a building.

24 What they're saying is he's not connected to the  
25 building, that's how they get around the issue of standing.  
26 They said we've made that determination. We've come to that

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1  
2 conclusion, Mr. Brown is not connected to that building. We  
3 say he is. Isn't that a question of fact, Judge, whether or  
4 not he is?

5 THE COURT: Ultimately it is something that the  
6 Court has to determine as a matter of law, whether the  
7 allegations that he makes sufficiently connect him, I  
8 suppose.

9 MR. LESTER: Right. So are they saying --

10 THE COURT: But, you know, agreeing that that's the  
11 analysis to be done, I don't know whether I'm bound.

12 MR. LEITMAN BAILEY: Rebuttal?

13 THE COURT: Sure.

14 MR. LESTER: Your Honor, I do want --

15 THE COURT: I want to find out whether they are  
16 conceding.

17 MR. LESTER: All right.

18 THE COURT: This issue of standing, the second  
19 time.

20 MR. LEITMAN BAILEY: In fact, he doesn't have a  
21 zone of interest. In all the cases that my adversary has  
22 cited helps with that and concludes that.

23 In Sierra Club they wanted a ski resort on a  
24 national landmark, a national refuge, but they didn't use it  
25 so they didn't have standing.

26 There are cases where there is a river, Friends of

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1  
2 the Earth vs. Laylo, where there is pollution to a river and  
3 they want to oppose use of the river. The plaintiff had  
4 standing because they used the river or wanted to use the  
5 river and they wanted to fish there and use it  
6 recreationally.

7 Timothy Brown, after 9/11,2001 does not use Ground  
8 Zero, does not use anywhere near Ground Zero or any of the  
9 community.

10 THE COURT: Stay away from Ground Zero, I don't  
11 think that's the issue. The issue is whether he uses 45-47  
12 Park Place or has some connection to that building. He may  
13 well ultimately have a connection to whatever memorial is  
14 built at Ground Zero.

15 MR. LEITMAN BAILEY: That's correct. But under the  
16 law that we have in New York and under the United States  
17 Constitution, you need to have an actual injury.

18 The people who want to fish in the place have an  
19 injury. The people who want to ski didn't have enough of an  
20 injury because they could have done something else. But all  
21 the cases that came down had someone being harmed or someone  
22 had an injury. Mr.

23 Brown after 9/11,2001 doesn't have that injury,  
24 whether it's Ground Zero or anywhere near Ground Zero. And  
25 our property is not at Ground Zero. You can't see it from  
26 Ground Zero. You can't throw a football and hit it from

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1  
2 Ground Zero. And it has nothing to do with Ground Zero.  
3 It's simply that a mosque community center is being built.

4 THE COURT: We are beginning to go around and  
5 around and repeat ourselves. Why don't we cut it off there?

6 MR. LEITMAN BAILEY: Thank you.

7 THE COURT: Miss Waters, anything you have to say  
8 in response to the second round of the standing issue?

9 MS. WATERS: Petitioner alleges that he is within  
10 the zone of interest because he alleges that he has an  
11 interest in preserving buildings adjacent to Ground Zero.

12 We think that that sort of --

13 THE COURT: I don't know if this constitutes  
14 adjacent, it is actually several blocks away. But go on.

15 MS. WATERS: Well, we think that is sort of a  
16 nebulous interest because his interest is clearly in the  
17 events of September 11th, and we believe this building is  
18 not connected to September 11th.

19 So we don't believe, even though he says he is  
20 within the zone of interest, that he is; that that is really  
21 a valid interest.

22 THE COURT: All right. Thank you, counselors.

23 You will get a decision in writing. It maybe  
24 sooner than this, but I would say probably no sooner than  
25 four weeks. But it could be sooner, it could be longer, it  
26 depends what else is going on in my docket, all right?

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Thank you very much.

MA. WATERS: Thank you, your Honor.

MR. LEITNER BAILEY: Thank you, your Honor.

M. LESTER: Thank you, your Honor.

\* \* \* \* \*

Certified to be a true and accurate transcription of the minutes  
taken in the above-captioned matter.

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Denise M. Paternoster, RPR

Senior Court Reporter

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