

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the application of

Jennifer Waller, et. al.,

Petitioners/Plaintiffs,

-against-

THE CITY OF NEW YORK, et. al.,

Respondents/Defendants.
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**AFFIRMATION OF DEPUTY
MAYOR CAS HOLLOWAY
IN OPPOSITION TO
TRO**

Index No. _____/11

CAS HOLLOWAY, an attorney admitted to practice before the courts of the State of New York, affirms the following to be true, upon information and belief, under penalty of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules (“CPLR”):

1. I am the Deputy Mayor for Operations for the City of New York. I am also an attorney admitted to practice law in the State of New York. In my capacity as Deputy Mayor for Operations I have been involved in monitoring the Occupy Wall Street protest. I am familiar with the facts set forth herein based upon my involvement in this matter, including personal observations, the relevant documents attached hereto, my review of the records and files maintained by the City of New York and my conversations with employees, officers and agents of the City of New York.

2. I submit this affirmation in opposition to the ex parte temporary restraining order obtained by petitioners/plaintiffs early this morning concerning what is known as the Occupy Wall Street protest taking place at Zuccotti Park. I strongly urge that this Court not extend the TRO and permit Brookfield and the City to go forward with their plan of re-

opening the park to all members of the general public, including protestors, while taking steps to prohibit the use of the Park in a manner that creates a public safety hazard, allows unhealthy and unsafe conditions to flourish and prevents all members of the general public from using and enjoying the park. If this TRO is extended and conditions in the Park are allowed to be restored to that which existed immediately prior to this morning's enforcement action, the unsafe and unsanitary conditions and the substantial threat to public safety as determined by the Police and Fire Departments, and detailed herein will once again be created.

3. At approximately 1:00 this morning, members of the New York City Police Department present at Zuccotti Park began announcing via bullhorn and written notices instructing those occupying the Park that (1) they must immediately remove all property, including tents, sleeping bags and tarps, from the Park.; (2) they must immediately leave the park on a temporary basis so that it can be restored to its intended use; (3) they will be allowed to return to the Park when this work is complete; (4) if they fail to remove their property, it will be removed and transported to a Department of Sanitation garage at 57th Street where it can be recovered with proper identification; and (5) if they fail to leave the park, or if they interfere with efforts to remove property from the park, they will be subject to arrest.

4. Presently the Park remains closed to the public as it is restored to a condition in which it will be open and available to both the Occupy Wall Street protestors and other members of the general public, however, as the Mayor indicated during his address earlier today it is our intention that the Park re-open imminently.

5. As detailed herein, this response was necessary because conditions in the Park prevented the Park from being open and accessible to all members of the public as required

by its special permit and also constituted a fire safety hazard as determined by the Fire Department.

6. The timing of the response was also necessary because, as detailed herein, giving advance notice, or conducting the restoration during daytime hours would have presented a significant risk to the occupiers, law enforcement and members of the general public in the vicinity of the park as illustrated by all that has occurred in the Park since the occupation began on September 17, including organized resistance when Brookfield previously gave advance notice; violence in other Occupy Wall Street locations throughout the nation that has occurred when government attempted to remove occupiers from sites; and the large presence of tourists, residents and business people in the immediate vicinity of the Park during daytime hours.

7. Photographs illustrating the conditions in the Park as of 2:00 p.m. yesterday are attached hereto as Exhibit A. I have reviewed the photos, and I personally observed these conditions forming during repeated visits over the past few weeks. I personally witnessed the steady accumulation of combustibles, smoking, and other hazards shown in the photos. My most recent visit was Friday evening, when I circled the park and walked through the entire site. During that visit I witnessed many conditions similar to those depicted in the photos. In addition, it is my understanding that as of this weekend the protestors began to bring in wooden pallets to elevate their tents and erect a wooden structure which significantly increased the risk of fire.

8. As a result of these conditions the Fire Commissioner also issued an order to Brookfield Properties, *inter alia*, directing the removal of combustibles and clearing all obstructions so as to maintain the Park's egress free from obstructions. A copy of the order is attached as Exhibit B.

Park Background

9. Zuccotti Park is a public plaza that was created in 1968 via a City Planning special permit issued pursuant to then-existing sections of the New York City Zoning Resolution. The special permit requires that the owner of the plaza (currently Brookfield Properties) maintain the plaza in a manner that closely resembles a public park in that it must be open to the public and maintained for public use 365 days per year. For example, the owner is responsible for, among other things, repairing broken benches and fixtures, maintaining plantings, cleaning the property, removing trash, and abating hazards.

10. While the plaza must generally be open and accessible to the public, the owner can impose conditions on that invitation which can take the form of reasonable rules. Brookfield's rules of conduct for members of the public using Zuccotti Park prohibit, among other things, 1) camping; 2) the erection of tents and other structures; 3) the placement of tarps, sleeping bags and other coverings on the property; and 4) the storage of personal property on the ground, benches and sitting areas

Occupy Wall Street History

11. On or about September 17, 2011, a group known as Occupy Wall Street began occupying Zuccotti Park on a 24-hour a day basis for the purported purpose of a demonstration. Shortly thereafter, the occupiers began to erect a small number of tents and other structures in the Park.

12. Within the first week the Police Department removed tents under the provision of the Administrative Code which prohibits erecting structures in public places. During this effort the Police Department met some resistance from the demonstrators.

13. Thereafter, tents did not begin to appear again until the second week of October. At that time, an initial attempt to remove the newly erected "medical tent" was met with resistance by protestors who surrounded the tent and would not allow the Police Department to take action. Since that time both the number and elaborate nature of tents has steadily grown.

14. In mid-October, at the request of Brookfield Properties, the City worked with Brookfield to facilitate Brookfield's ability to remove the demonstrators and their belongings on a temporary and section-by-section basis. Demonstrators were given approximately 24-hours advance notice of Brookfield's intent to conduct this cleaning effort. This notice gave the demonstrators time to marshal their forces and plan an effort to resist the cleaning.

15. In contrast to the usual 150-200 people who spend the night in the Park, when the Police Department arrived in the early morning hours on the day of the scheduled cleaning there were over 2,000 people in the Park and overflowing into the streets where they began marching. While the scheduled cleaning had been cancelled in advance of the Police Department's arrival, had Brookfield wanted to attempt to go forward with the cleaning effort it would have been difficult and dangerous for the Police Department to attempt to remove people under those conditions.

16. It is our understanding that the occupiers and their supporters monitor communications on police radios and have applications on their phones which enable them to send messages to quickly marshal supporters to come to the site should there be a need. Indeed, we are aware that shortly after the Police Department arrived this morning, the protestors began to send electronic messages in an attempt to draw supporters to the Park to hamper the Police Department's efforts to make the Park safe.

17. Makeshift items that can be used as weapons, such as cardboard tubes with metal pipes inside, had been observed among the occupiers' possessions and, after the march on the Brooklyn Bridge, knives, mace and hypodermic needles were observed discarded onto the roadway. Thus, it was our understanding that the protestors may have had a significant number of items that could potentially be used as weapons. However, as the configuration of tents and people in the Park make it unsafe for police officers to go through the Park on routine patrol, recently officers have only entered the Park to respond to incidents such as 911 calls. As a result, the type of items being stored in the area was not entirely known prior to the clearing.

18. In addition, what was before a park with little to no crime has seen approximately 73 misdemeanor and felony complaints and approximately 50 arrests since the occupy movement began, and people who have a known history of violent interactions with the police have been observed in and around the Park.

19. Quality of life issues, including noise caused by drumming and urination and defecation in public were also pervasive and the plaintiffs/petitioners' assertions that the Park was being maintained in a healthy and safe condition are simply not true.

20. At the end of October the Fire Department removed approximately six gasoline and diesel generators from the Park to address public safety concerns arising from their use and the associated storage, handling and use of gasoline, diesel and other combustible fuels in a highly congested area and in close proximity to a large quantity of flammable materials.

21. Notwithstanding the removal of the generators, as exhibited by the Fire Commissioner's Order [Exhibit B], conditions in the Park constituted a fire hazard. Specifically, in the last several days wooden pallets were observed being brought into the Park to elevate the tents off of the ground. A large wooden structure was also in the process of being built. Other

combustibles which have steadily increased in number include sleeping bags, pillows, clothing, rubbish, food wrappings and tenting (both makeshift and manufactured). Smoking was frequently observed and there were extension cords and electrical wires running throughout the Park. These conditions are all documented in the photographs attached as Exhibit A.

22. The configuration of tents, people and personal belongings in the Park has created a condition where there are no clear means of egress in the event of a fire. As a result, if a fire were to break out people would have to navigate over and around people and belongings in order to make their way out of the Park, a task which would be extremely dangerous in a situation of panic caused by a fire. Thus, the Fire Department determined that it was necessary to order the removal of the belongings from the Park in order to mitigate the public safety hazard.

23. In addition, in a letter dated November 14, 2011, Brookfield expressed concern both for public safety and the fact that it cannot operate the Park as it is required under its special permit, and it asked that the City provide necessary assistance in having the tents and other belongings stored at the Park removed, and in having occupants temporarily relocated from the Park on the understanding that after this has occurred the Park will be restored to its intended use and reopened to all.

Dated: New York, New York
November 15, 2011



CAS HOLLOWAY