RealEstateRama
NEW YORK

JANUARY 31, 2012

RULING SAYS MTA FACES MILLIONS MORE IN DAMAGES TO RIESE ORGANIZATION IN FULTON STREET CONDEMNATION

**Appellate Division Previously Affirmed Judgment Against MTA,
Ordering it to Pay $35 Million, Attorney's Fees
and Expenses For Condemned Property**

*Warren A. Estis, Michael E. Feinstein of Rosenberg & Estis, P.C. Represented
Riese Organization Restaurant Operators Seeking Costs for Lost Fixtures*

New York, NY – January 31, 2012 – (RealEstateRama) — The State Supreme Court has delivered yet another ruling against the Metropolitan Transportation Authority (MTA) on its use of eminent domain in the taking of 194-196 Broadway in Lower Manhattan as part of the Fulton Street Transit Center project.

State Supreme Court Justice Martin Shulman has ruled that three foodservice tenants that leased space in the building and were displaced by the condemnation, can recover damages from the MTA for the value of trade fixtures lost in the condemnation — approximately $15 million according to the tenants.

The tenants — 196 Bway TGI, Inc. (TGI), 196 Bway KFC, Inc. (KFC) and 196 Bway Food Court, Inc. (Food Court) — and were represented by Warren A. Estis, founding partner of Rosenberg & Estis, P.C., and Michael E. Feinstein, a partner in the firm. The tenants and the fee-owner of the building, DLR Properties LLC (DLR), were part of the Riese Organization.

In a condemnation, tenants are entitled to just compensation for the value of their trade fixtures. After the tenants filed claims against MTA for the value of their fixtures, and after the MTA made an advance payment to the tenants of approximately $2 million, the MTA sought to have the claims dismissed. The MTA also demanded a refund of the payments it had already paid.

The MTA claimed that because the tenants and the fee-owner shared certain elements of common control, the tenants' separate corporate existences should be disregarded, and tenants should be treated as one and the same as the fee owner, DLR, for purposes of the condemnation. DLR, as owner of the building, after trial in its favor, had already been compensated for the value of its fee interest in the property.

Justice Shulman rejected MTA's contentions, ruling that the tenants were, in fact, distinct corporate entities with separate tenancies in the building, and that the MTA's claim that they were part of DLR was an inappropriate attempt to "pierce the corporate veil." The tenants are now entitled to recover the full value of their trade fixtures from the MTA.

“We are pleased with the decision rendered by Justice Shulman,” said Estis. “The MTA’s approach on this matter has been very costly, because on top of the awards against them, the MTA is accruing interest at 9 percent for each year since the condemnation, which took place in 2006.”

This is the just latest is a series of rulings that have rejected MTA’s attempts to deprive the Riese Organization of just compensation for MTA’s condemnation of 194-196 Broadway.

With respect to MTA’s condemnation of DLR’s fee interest in the property, MTA had initially undervalued the property at only approximately $15 million. After the Riese Organization challenged the MTA’s valuation and took the matter to trial, State Supreme Court ruled that the MTA must pay DLR $35.2 million for the condemnation of DLR’s fee interest. The Appellate Division, First Department affirmed that ruling in July 2011.

In addition, because the condemnation award substantially exceeded the MTA’s initial undervaluation, Supreme Court ruled that the MTA was also liable to DLR for its attorneys’ fees and expenses in connection with the condemnation of 194-196 Broadway. The Appellate Division affirmed that ruling in July 2011 as well.

Warren A. Estis and Michael E. Feinstein represented DLR Properties in the previous cases before the Supreme Court and Appellate Division.

Founded in 1979, Rosenberg & Estis, P.C. is widely recognized as one of New York City’s pre-eminent real estate law firms. Rosenberg & Estis, P.C. represents clients in all aspects of real estate development, transactions, financing, litigation, rent regulation and governmental affairs.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

----------x

In the Matter of the Application of the METROPOLITAN TRANSPORTATION AUTHORITY relative to acquiring title in fee simple absolute to certain real property, and terminating private interests in vaults in certain New York City sidewalks, required for the

Index No: 400467/06

FULTON STREET TRANSIT CENTER PROJECT PHASE 2

Decision and Order

BLOCK 79, LOT 15; BLOCK 79, LOT 16; BLOCK 79, LOT 18; BLOCK 79, LOT 19; BLOCK 79, LOT 21 (FEE AND VAULTS); BLOCK 79, LOT 25; BLOCK 79, LOT 26 (VAULTS)

as said property is shown on the current Tax Map of the Borough of Manhattan, City and State of New York.

----------x

Hon. Martin Shulman, JSC:

196 Bway TGI, Inc. ("TGI"), 196 Bway KFC, Inc. ("KFC") and 196 Bway Food Court, Inc. ("Food Court") were tenants (collectively, "Tenants") who respectively leased space in a three story retail building ("Building") situated on certain property located at 194-196 Broadway in Lower Manhattan ("Property")[1]. Dennis Riese ("Riese") is the sole principal of DLR Properties, LLC ("DLR")("Riese/DLR," where appropriate) who owned and controlled the Building and Property.[2] On March 29, 2006 (the "Vesting Date"), condemnor Metropolitan Transportation Authority ("MTA") acquired title to the Property

---

[1] References to pages from the Framed Issue Hearing transcripts dated April 28, 2011 and May 4, 2011 are collectively cited as "Tr __."

[2] In 1983, Riese's father and uncle originally purchased the Property (Tr at 14). TLS NYC Real Estate, LLC ("TLS")(Tr at 14), a successor owner, then conveyed the Property to DLR in 2004 (Tr at 98).

through eminent domain. The acquisition of this and four other properties comprising almost a full city block (and the expected demolition of buildings located thereon) was needed to initiate a capital project to construct the Fulton Street Transit Center which would improve rider access to varied subway lines and PATH trains.

In timely filed notices of claim with the MTA, Tenants seek just compensation for their trade fixtures in the Building condemned with the Property ("fixture claims"). To appreciate the current fixture claims dispute between the Tenants and the MTA that required a Framed Issue Hearing, it is necessary to briefly recount an earlier, relevant dispute between Riese/DLR, other property owners and MTA as to the parties' dissimilar valuation approaches to determining the owner-Tenants' just compensation awards and its eventual disposition in this now six year old condemnation proceeding.

Subsequent to the Vesting Date, MTA made advance compensation payments to Riese/DLR and the other owners of the condemned properties. MTA proceeded to calculate the condemnation awards sought by evaluating each acquired property separately, whereas Riese/DLR and the other property owners contended their respective properties should be evaluated in their highest and best use as an assemblage.[3] MTA further surmised that the condemned properties' use as an

---

[3] The owner-claimants uniformly claimed this assemblage reflected the reasonable probability of a resultant sale, transfer and/or shift, as-of-right, of air rights between and among these condemned property owners through a zoning lot merger (i.e., joining of two or more adjacent zoning lots to create a new zoning lot) which could potentially have permitted the commercial/residential development of almost 650,000 square feet of space. Parenthetically, air rights are "[u]nused development rights . . . [that] represent the difference between the maximum permissible floor area and the actual built floor area on a zoning lot ([see NYC] Department of City Planning, Zoning Handbook, at 146 [2011]) . . ." (bracketed matter added)(*In re Metropolitan Tr. Auth.*, 86 AD3d 314, 318 [1st Dept 2011])("MTA Appeal Decision").

assemblage was grounded on speculation and designed to enhance the value of the condemned properties after the Vesting Date.

Eventually, a joint trial was held to determine whether Riese/DLR and the other property owners were entitled to additional compensation based on "the fair market value of the condemned property in its highest and best use [as an assemblage] on the date of taking . . ." (bracketed matter added)(MTA Appeal Decision at 319). Relevant here, the MTA Appeal Decision affirmed the trial court's finding that Riese/DLR was entitled to a higher rate per square foot as just compensation because it was reasonably probable that the highest and best use of the Property would be as part of an assemblage of other properties[4] through Riese/DLR's potential sale of air rights in the reasonably near future (*id.* at 320-326). Thus, the MTA Appeal Decision affirmed Riese's/DLR's fee award of about $35.2 million plus additional related costs such as attorney's fees.

MTA's Position

Against this backdrop, it is MTA's contention that because Riese/DLR received this higher award as the fee owner of the Property, granting Riese an additional fixture claims award here would constitute an improper windfall especially when Riese beneficially owned and controlled Tenants *and* retention of Tenants' respective trade

[4] The trial court concluded that "the highest, best and most profitable use of the [assembled] properties would have resulted in the construction of residential rental and condominium development, with ground and second floor retail development . . . [and] that demolition of the [assembled] properties would have been required. . ." (bracketed matter added)(*see Matter of the Application of the Metropolitan Tr. Auth.,* Index Nos.: 401185/08, 401188/08 and 401192/08, *n.o.r.* , September 11, 2009 [Sup Ct, NY Co, Tolub, J], as Exhibit A to MTA's Pre-trial Memorandum of Law at p. 10).

fixtures is inconsistent with the hypothetical highest and best use of the Property (contrarily, the trade fixtures must be demolished to achieve that use). Under these circumstances and because it perceives unity in Riese's ownership in the Property and trade fixtures, MTA seeks denial/dismissal of Tenants' fixture claims.

To support the notion that "all [Tenants'] roads lead to R[iese]," MTA principally relies on record evidence submitted at the hearing of the undisputed, closely-held ownership structure and relationship between Riese and Tenants which can be simply described.[5]

Riese is the sole member of DLR, a limited liability company and fee owner of the Property which Riese treated as a pass through entity reporting its income on his individual tax return[6] (Tr at 9-10; see also, MTA Exh 14). National Restaurants Management Inc. ("NRM")[7] is the sole shareholder of TGI, KFC and Food Court, respectively (Tr at 21). Riese, as the sole shareholder of NRM Holdings, LLC ("NRM Holdings"), owns a controlling interest in NRM by virtue of his ownership of 800 voting shares of NRM common stock and 1650 shares of NRM preferred stock (Tr at 21-24; see also, MTA Exh 10). The 721 shares of non-voting NRM common stock are divided

---

[5] For ease of reference, MTA supplied a flow chart (MTA Exh 29) which clearly sets forth the Tenants' ownership structure.

[6] US Treasury Regulation §301.7701-2 provides that where a corporate entity has a single owner, the corporate classification is disregarded and the entity is treated as a sole proprietorship for tax purposes.

[7] NRM is a foreign corporation organized under the Laws of Delaware (see Restated Certificate of Incorporation as MTA Exh 16), whose sole business purpose is to own and operate restaurants and does so, among other ways, through its ownership of subsidiary corporations such as TGI, KFC and Food Court (Tr at 90). As of the Vesting Date, NRM operated approximately 125-140 restaurants (Tr at 96).

as follows: (1) NRM Holdings owns 47 shares (*id*); (2) a grantor's trust for the benefit of Riese's children owns 457 shares (MTA Exh 9) (*id*); and (3) certain NRM employees/executive officers own 217 shares (*id*).

MTA further highlights Riese's close control (arguably the equivalent of ownership) of Tenants (wholly owned subsidiaries of NRM) by virtue of his status as NRM's Chairman and Chief Executive Officer, as sole member of NRM Holdings and as the sole voting shareholder of NRM (Tr at 22). In other words, MTA claims Riese has the exclusive power to elect and remove NRM directors and/or officers, to decide when to declare dividends to be paid to shareholders (MTA Exh 17) and, as principal shareholder, to exercise a first option to re-purchase a terminated shareholder-employee's non-voting shares (see First Amendment to Stockholders Agreement as MTA Exh 19). According to the MTA, Riese did not seriously challenge MTA's contention that he controlled DLR, the Tenants and all other entities that comprise the Riese Organization:

> Q. How would you describe the Riese Organization?
>
> A. It's a loosely knit group of various corporations, trust entities, LLC's that have [sic] common control by me. (Tr at 36)

Serving as MTA's pièce de résistance is NRM's General Counsel, James Rosenzweig's ("Rosenzweig") Riese-approved February 17, 2005 letter (Tr at 119) (MTA Exh 28), responsive to MTA's earlier January 12, 200[5] letter (MTA Exh 27) *inter alia* requesting copies of all leases and a rent roll for the Property:

> (3) With respect to your document requests, we enclose the following. The lettered subparagraphs are keyed to the "bullet" points on page 2 of your letter:

(c) As you know, affiliates of our company manage restaurants throughout Manhattan, including the restaurants at this property. The building is thus owner-occupied except for a single tenant. A copy of that tenant's lease is enclosed herewith.[8]

(d) Again, as the building is owner-occupied, we do not have a rent roll for the property. The rent for the single third-party tenant referenced above is set forth in Schedule "A" of its lease. . .

(f) As an owner-occupied property, we concern ourselves with the financial performance of the property on a combined basis, that is, aggregating both real estate and restaurant performance. . .

Subparagraph (f), MTA argues, succinctly demonstrates a "unity of business purpose as both were parts of a common enterprise engaged in maximizing income from the Property . . . and there was no rent roll with respect to Tenants' lease payments . . . which payments were reported on Mr. Riese's personal tax return . . ." (MTA Post-Trial Memorandum of Law at p. 11)(MTA Exh 14). Thus, on this record and relying on recent case law,[9] MTA contends it would be unjust and illogical to not only require MTA to award Riese/DLR a higher value for the Property as a development site, but also as

---

[8] At that time, Rosenzweig produced a copy of a sublease between OMG and KFC which indisputably is not relevant to the framed issue as to whether there is a unity of ownership between Riese/DLR and Tenants.

[9] MTA cites to two unreported decisions which denied/dismissed fixture claims and suggests that these decisions discussed fact patterns comparable to the overlapping business relationship between Riese/DLR, as Property owner, and Tenants. See *City of New York v American Pipe and Tank Lining Co., Inc.*, Index No. 410266/10, February 10, 2011 (Sup Ct NY Co, Solomon, J)(Exhibit C to MTA's Pre-Trial Memorandum of Law)("AP&T Decision"); see also, *In the Application of Petitioner/Condemnor New York State Urb. Dev. Corp. d/b/a Empire State Dev. Corp.*, Index No 126578/06, April 5, 2007 (Sup Ct Niagara Co, Kloch, J)(Exhibit C to MTA's Pre-Trial Memorandum of Law)("Fallsite Decision").

Tenants' principal, beneficial owner of fixtures which must be destroyed to achieve the Property's highest and best use.

Tenants' Position

Tenants steadfastly maintain that MTA wrongly attempts to disregard the separate corporate existence of TGI, KFC and Food Court and their leases to orchestrate factual support for the notion that Riese/DLR and Tenants should be treated as a "single entity" to justify denying Tenants' fixture claims.

Tenants contrarily claim the following facts gleaned from Tenants' testimonial and other record evidence went largely unchallenged and show Riese/DLR never dominated Tenants, disregarded their discrete corporate forms or created corporate shells he owned and controlled to reap a windfall in this condemnation proceeding:

- TGI, KFC and Food Court are lawful New York corporations duly organized in December 2002 (MTA Exhs 3-7), and each corporate-tenant executed a ten year lease with TLS, DLR's predecessor in interest, to operate a restaurant in the Building at the Property (MTA Exhs 24-26);

- NRM is the sole stockholder of Tenants and Riese, as the sole member of NRM Holdings, indirectly has a 56% stock ownership interest in NRM, whereas his children via an independent trust and other executive employees have the remaining 44% stock ownership of NRM;[10]

- While nominally NRM's Chairman and its Chief Executive Officer, Riese (Tr at 21) does not make unilateral decisions but defers to

[10] The stockholders' respective percentages of ownership interest in NRM as of the Vesting Date can be further broken down as follows: (1) NRM Holdings (56%); (2) Riese's children's trust (30%); (3) NRM executive employee, Gary Trimarchi ("Trimarchi")(10%); (4) NRM executive employee, Rosenzweig (1%); (5) NRM executive employee, Jamie Galler ("Galler") (1%); (6) NRM executive employee, Ann Martinez ("Martinez")(1%); and (7) NRM executive employee, Mark Stempel ("Stempel")(1%) (Tr at 96; see also, MTA Exh 10).

NRM's Board of Directors[11] who meet at least three or four times a year (or more often if necessary), and it is the directors who make major decisions (i.e., to borrow money, buy or sell property and declare dividends to be paid to stockholders on a pro rata basis without any preference given to voting shares)(Tr at 29 and 108-109);

- As wholly-owned subsidiaries of NRM, Tenants maintain separate books and records as required by certain franchise agreements (Tr at 112), and their respective income is reported on NRM's consolidated return, wherein each Tenant has its own federal tax identification number (MTA Exh 13);

- Each of Tenants' leases required Tenants to pay rent to DLR, which concomitantly triggered their requirement to pay a commercial rent tax ("CRT") as well as file appropriate commercial rent tax returns (see illustratively, Tenants' Exhs H-1 and H-2)(if the Building was in fact owner-occupied without any lease and/or rent being paid, no CRT would be due[12]);

- Riese and/or DLR neither paid any of Tenants' respective build-out expenses (e.g., installation of improvements, trade fixtures, etc.) (Tr at 82) or subsequent operating expenses, obtained any of the requisite permits for operating their restaurants (Tr at 109-110), hired any of Tenants' respective employees or paid their salaries and related benefits, if any, nor received any Tenants-generated income from the operation of these restaurants (Tr at 111-112); and

- Having never commingled any assets before or after the Vesting Date, significant monies MTA paid (about $27 million) towards justly compensating Riese/DLR as the Fee Claimant for the

---

[11] As of the Vesting Date, in addition to serving as Directors of NRM and Tenants (MTA Exh 8), these entities had/have five other officers. Trimarchi "is the President of the Company [NRM]. He is responsible for all of the operations of the company, the entire day to day, and really pretty much everything . . . (Tr at 95). Martinez is Chief Financial Officer and in-house accountant. Rosenzweig is Vice President, General Counsel and Secretary. Stempel is Vice President of Real Estate and Galler is Executive Vice President of Operations (Tr at 21 and 95).

[12] See generally, NYC Adm Code §11-702; and *Conboy, Hewitt, O'Brien & Boardman v Commissioner of Fin. of City of New York*, 249 AD2d 235, 236 (1st Dept 1998)(the obligation to pay lease rent imposes CRT payment obligations).

condemned Property were deposited in DLR bank accounts and never divided among NRM and/or Tenants (Tr at 82-84); conversely, about $2 million in advance payments MTA made to Tenants as fixture claimants for its trade fixtures similarly were never shared with Riese/DLR, but rather were used to advance NRM's business interests in opening and operating new restaurants elsewhere (Tr at 88-90 and 91-92).

Moreover, Tenants do not view Rosenzweig's February 17, 2005 letter as a purported admission against their pecuniary interest and in sworn testimony offered explanations for using the term "owner-occupied" and for not producing Tenants' leases or a rent roll in response to MTA's request for information relative to the fee appraisal of the Property.

Because DLR was the fee owner of the Property and Riese was majority owner of NRM stock, Rosenzweig perceived TGI, KFC and Food Court, who were otherwise rent paying tenants, as being affiliated with Riese/DLR under the aegis of the Riese Organization. It is in this context that Rosenzweig testified as to why he used the term "owner-occupied" to distinguish Tenants from KFC's subtenant, OMG, which had no affiliation with this umbrella organization (Tr 123-127). Further, since Tenants' leases did not contain negotiated fair market rents, Rosenzweig testified that he believed this documentation would not have been useful or relevant in determining a fair market rental value when appraising DLR's fee interest and its designated appraiser, in fact, never used same (Tr at 133-134). Finally, Rosenzweig testified that it was not a standard business practice for property-owning entities within the Riese Organization to regularly generate and maintain rent rolls listing tenants and recording their rental income, hence none existed for the Building (Tr at 131 and 134).

Controlling Legal Principles and Analysis

Generally, a condemnor is constitutionally required to compensate a property owner "so that he may be put in the same relative position, insofar as possible, as if the taking had not occurred . . ." *Rose v State*, 24 NY2d 80, 87 (1969). Further, a compensatory award for the taking must not only be just to the person "'whose property is taken, but [also] to the public which is to pay for it' . . ." (*id*).

Relevant here, certain governing legal principles under eminent domain mandate just compensation to tenants for fixtures. "The general rule is 'when leased realty is taken under eminent domain, the tenant is entitled to compensation for fixtures which he has attached if they are condemned with the realty, as long as he otherwise would have been entitled to remove such fixtures at the end of the tenancy.' [citations omitted]." *In re City of New York (College Point Indus. Park Urban Renewal Project II)*, 55 NY2d 353, 359 (1982). The courts formulated this rule to promote the equitable treatment of trade fixture owners and to specifically "ameliorate the harsh result to those who substantially improved property but who had less than a fee interest . . ." *Rose v State*, *supra*, 24 NY2d at 85. Significantly, "this rule of law applies regardless of whether or not the owner of the fixtures is the owner of the fee . . ." *In re City of New York*, *supra*, 55 NY2d at 361.

However, where, as here, it has been affirmed (see MTA Appeal Decision) that the highest and best use of the condemned Property would be as part of an assemblage for commercial/residential development (see Footnote 4, *supra*), the Building on the Property would obviously be inconsistent with that highest and best use

perforce requiring its demolition. And relevant to the framed issue, if Riese/DLR, the Property owner, was also the owner of the fixtures and improvements that comprised the leased spaces where Tenants respectively operated, he would therefore not be able to pursue a separate claim for the Building's improvements and trade fixtures to be eventually removed as it would constitute a double recovery. *In re Town of Hempstead*, 56 NY2d 1020, 1022 (1982); *In re West Bushwick Urban Renewal Area, Phase 2*, 70 AD3d 708, 709 (2d Dept 2010)("Where . . . 'improvement[s] . . . [are] inconsistent with the highest and best use of the property, the claimant[s] [as 'the owners of both the subject property and the trade fixtures located thereon'] . . . [are] not entitled to compensation for th[ose] improvements' [which] . . . would have to be destroyed. . .") (bracketed matter added); see also, *Acme Theatres, Inc. v State*, 26 NY 2d 385, 388-389 (1970) citing to *Van Kleek v State*, 18 NY2d 897 (1966)("It is illogical to award damages for buildings that must be destroyed to achieve the use contemplated in the award of damages for the land . . .").

The framed issue being decided presents a close question, particularly when there is an element of common ownership and control between Riese and Tenants by virtue of his controlling stock ownership in NRM. (Parenthetically, DLR, as fee owner of the Property, had no actual or beneficial ownership interest in NRM or Tenants). Should this fact alone defeat Tenants' fixture claims? Based on principles of corporate law and relevant case law, the answer to this question must be no.

In colloquy during the Framed Issue Hearing, this court initially discussed the perceived irrelevancy of the doctrine of "piercing the corporate veil" as circumstances in this instance did not remotely suggest that Tenants' respective corporations were

organized as instruments of fraud or malfeasance to wrongly shield Riese and the other shareholders of NRM, Tenants' parent company, from being personally liable for certain acts, obligations or debts. In fact, MTA has not even proven, let alone suggested, that Riese exercised complete domination over, or for that matter had an unqualified controlling interest in, Tenants "to further . . . [his] personal rather than corporate business . . ." (*Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]; see also, *Walkovszky v Carlton*, 18 NY2d 414, 417 [1966]) and with the intention of committing a wrong or injustice.

Notwithstanding their arguments to the contrary, MTA is indirectly invoking this doctrine of piercing the corporate veil to claim Riese owns both the fee and fixtures, and this doctrine has been invoked in condemnation proceedings. *Guptill Holding Corp. v State*, 33 AD2d 362 (3d Dept 1970), *affd* 31 NY2d 897 (1972); *In re City of New York*, 21 Misc3d 1127A, 2008 NY Slip Op 52253(U)[*8] (Sup Ct Kings Co, 2008, Gerges, J).

In this vein and after a review of the record evidence, this court finds that prior to the Vesting Date, Tenants: (1) existed as legitimate respective corporations duly organized to operate TGI, KFC and Food Court as restaurants and were not fictional corporate tenants; (2) executed bona fide leases with TLS, DLR's predecessor-in-interest (presumably assigned to Riese/DLR in 2004), that established lawful rent paying tenancies; (3) paid monthly rent to DLR and the required CRT based on such annual rent payments; (4) had their own officers, directors and employees and maintained their own books and records; (5) had separate federal tax identification numbers and filed separate tax returns; and (6) paid their own expenses and never shared their income or commingled their assets with those of Riese or DLR.

Moreover, this court finds no evidence that TLS or Riese/DLR ever defrayed the costs of Tenants' improvements and trade fixtures or claimed any proprietary interest in same before the Vesting Date. Of critical importance, unlike the distinguishable facts underlying the AP&T and Fallsite Decisions MTA rely on, Tenants were not shell corporations Riese owned and controlled, Riese and Tenants were not alter egos of each other and Tenants' leases (belatedly showcased at the hearing) and their interests as Fixture Tenants were not contrived by Riese/DLR "for the sole purpose of augmenting its condemnation award . . ." (See New York State Urban Dev. Corp.'s Post-Trial Memorandum of Law as Exhibit A to MTA's Post-Trial Memorandum of Law at p. 24).[13] Simply put, there is no showing of any wrongful or inequitable consequences on this record to justify denying Tenants' fixture claims.

The parties shall appear for a status conference on February 15, 2012 at 9:30 a.m. at Part 1, in Room 325, 60 Centre Street, New York, New York, to coordinate the eventual disposition of Tenants' fixture claims.

Counsel for the parties may obtain their respective hearing exhibits from the Part 1 Clerk. The hearing exhibits will be destroyed unless they are retrieved on or before the February 15, 2012 conference date.

---

[13] Notably, DLR's February 15, 2005 letter, discussed earlier, is simply not a smoking gun as this court finds Rosenzweig's sworn explanations to be reasonable in the context of the parties' then focus on what the just fee condemnation award should be.

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been mailed to counsel for the parties.

Dated: New York New York
January 26, 2012

HON. MARTIN SHULMAN, J.S.C.