

IN THE
SUPREME COURT OF THE UNITED STATES

No. 18A842

STAHL YORK AVE. CO., LLC,
Applicant,

v.

THE CITY OF NEW YORK; THE NEW YORK CITY LANDMARKS
PRESERVATION COMMISSION; MEENAKSHI SRINIVASAN, in her
capacity as Chair of the New York City Landmarks Preservation
Commission,
Respondents.

APPLICATION TO THE HON. RUTH BADER GINSBURG
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS

Pursuant to Supreme Court Rule 13(5), Stahl York Ave. Co., LLC (“Stahl” or “Applicant”) hereby moves for an extension of time of 28 days, to and including May 10, 2019, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be April 12, 2019.

In support of this request, Applicant states as follows:

1. The New York Court of Appeals rendered its decision in this case on December 13, 2018 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. § 1257(a).

2. This case presents a substantial and important question regarding the scope of review for constitutional claims brought in state courts: whether a state court adjudicating a challenge to administrative action under state or local law and the Takings Clause of the United States Constitution may decide the Takings claim based solely on an administrative agency's fact-findings, even though the agency had no authority to adjudicate the Takings claim and was merely considering an application under different standards set forth in a local law. This Court has explained that where a plaintiff brings both Takings Clause claims and state law claims challenging local administrative action, the Takings claims are "not bound by the administrative record" and judicial review may "range beyond" that record. *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 167 (1997).

3. The state trial court in this case improperly deferred to the administrative record of the New York City Landmarks Preservation Commission ("LPC") when resolving Stahl's Takings claim, even though that claim was not and could not be raised before the LPC and even though there was no mechanism for Applicant to put critical takings-related facts into the administrative record. The LPC proceedings also lacked many of the protections afforded by a judicial proceeding: they lacked evidentiary rules, there was no testimony offered under oath, Stahl could not cross-examine adversarial witnesses, and Stahl's application was not adjudicated by a disinterested factfinder. The Appellate Division of the Supreme Court, First Judicial Department nevertheless affirmed the trial court's decision. The New York Court of Appeals then denied Stahl's motion for leave to appeal and

declined to exercise its jurisdiction to hear appeals from orders “which finally determine[] an action where there is directly involved the construction of the constitution of the . . . United States.” CPLR § 5601(b)(1). That ruling conflicts with the decisions of other state high courts, which have held that a plaintiff is entitled to de novo review of the factual issues underlying its Takings Clause claim. *See, e.g., Cumberland Farms, Inc. v. Town of Groton*, 262 Conn. 45, 69 (2002); *Hensler v. City of Glendale*, 8 Cal. 4th 1, 15 (1994) (en banc). This case will provide the Court an opportunity to resolve this split among state high courts.

4. Counsel of Record, Alexandra A.E. Shapiro, has substantial briefing obligations in several complex federal appeals. This includes an opening brief in *United States v. Percoco (Aiello)*, No. 18-2990(L) (2d Cir.), a reply brief in *United States v. Davenport*, No. 18-3601 (2d Cir.) and a petition for a writ of certiorari in *Walters v. United States*, No. 18A812.

5. This extension is necessary to allow Applicant sufficient time to prepare a petition that fully addresses the complex issues presented by this appeal.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including May 10, 2019, be granted within which Applicant may file a petition for a writ of certiorari.

April 2, 2019

Respectfully submitted,



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Exhibit 1

State of New York
Court of Appeals

*Decided and Entered on the
thirteenth day of December, 2018*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

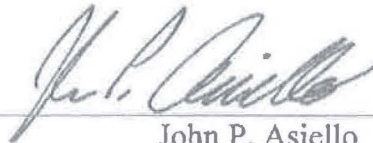
Mo. No. 2018-973
In the Matter of Stahl York Avenue Co., LLC,
Appellant,
v.
City of New York, et al.,
Respondents.

Appellant having appealed and moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no substantial constitutional question is directly involved; and it is further

ORDERED, that the motion for leave to appeal is denied.



John P. Asiello
Clerk of the Court



*State of New York
Court of Appeals*

*John P. Asiello
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

Decided December 13, 2018

Mo. No. 2018-973
In the Matter of Stahl York Avenue Co., LLC,
Appellant,
v.
City of New York, et al.,
Respondents.

On the Court's own motion, appeal dismissed, without costs,
upon the ground that no substantial constitutional question is
directly involved.
Motion for leave to appeal denied.