No. 18-____

In the Supreme Court of the United States

JAMES H. BRADY,

Petitioner,

–v–

ASSOCIATED PRESS TELECOM; NBC NEWS NEW YORK; WCBS-TV NEW YORK; THE NEW YORK TIMES COMPANY; NEW YORK POST; NEW YORK DAILY NEWS; WALL STREET JOURNAL; NEWSDAY MEDIA GROUP,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This court expressly said in its landmark *New York Times v. The United States* Decision that the purpose and duty of the free press was to protect the governed from the governors. The opposite happened here. The Media Defendants in this case knew from the previous New York Post reporting on October 15, 2008 that the expert "The New York Post" consulted with attorney Stuart Saft who stated pursuant to his offering plan contract: "Brady has a right to at least some of the new development rights and as a result the co-op should have at the very least obtained a waiver and the language [in the second amendment] is so broad it would cover any kind of addition to the roof". Despite their understanding of the truth, Media defendants concealed knowledge from the public that a State Court Judge in power unlawfully rewrote the contract to void the $70-90 million in development rights that were contractually appurtenant to Petitioners Manhattan commercial co-op apartment. The Press Defendants hid from the public their knowledge that the New York Appellate Court Justices, former New York Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus Vance all did nothing and permitted the crime to happen for the benefit of those with money and power. In addition, the Press defendants hid from public scrutiny their knowledge that the same judge in power issued $500,000.00 in unconstitutional and unjust sanctions meant to destroy Petitioner and make him too weak to fight back.

1. Was it wrong and a direct conflict with this Court when the Court of Appeals affirmed the District Court Decision that stated that News Agencies have a First Amendment right to hide the crimes of those

in power and have no duty to hold those in power accountable if they wish to keep the crimes of those in power hidden from public scrutiny?

2. Can the victim of a crime hold the press liable for colluding by hiding the crimes by those in power?

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Instant appeal arises from the Southern District of New York Court Opinion and Orders dated January 11, 2017 and February 3, 2017, in the matter of *James H. Brady v. Associated Press, et al.*, No. 16-Civ-2693. (App.4a, 8a). The Order appealed from granted Defendant-Respondent's pre-answer motion to dismiss with prejudice and without leave to amend.

The Second Circuit Court of Appeals affirmed the District Court decision in a Summary Order dated March 1, 2018. (App.1a). Request for panel rehearing was denied and so was *En Banc* review on April 25, 2018. (App.32a) The relief sought was a mandatory injunction requiring the press to warn the public of their knowledge that New York State courts were being permitted to rewrite contracts and higher court decisions to void what these pieces of material evidence said on their face while law enforcement officials turned a blind eye to these unlawful and unconstitutional acts. The other causes of action included 1) aiding and abetting conspiracy to defraud and conspiracy against rights, and 2) negligent misrepresentation.

The Court should take judicial notice that the present case and two other related cases, *James H. Brady v. Eric Schneiderman, Attorney General of the State of New York*, No. 15-cv-9141 (RA), the Honorable Justice Ronnie Abrams presiding. and *James H. Brady v. John Goldman, et al.*, No. 17-268-cv, were also dismissed by the same pane of judges on the same date in Summary Orders. Requests for panel rehearing in these cases and En Banc review were denied on April

25, 2018. Petitions for Writ of Certiorari are also being made in in these cases.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The appeal is from a final judgment that disposes of all of Petitioner-Petitioner's claims in this action.

CONSTITUTIONAL PROVISIONS

- **U.S. Const. amend. V**

  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- **U.S. Const. amend. XIV, § 1**

  All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Introduction to Case

George B. Daniels, United States District Judge, states the following in the opening paragraph of his January 10, 2016 decision:

> Plaintiff James Brady initially filed this action against Associated Press Telecom, NBC News New York, WCBS-TV New York, The New York Times Company ("The Times"), The New York Post, The New York Daily News, The Wall Street Journal, and Newsday Media Group. (Compl., ECF No. 1.) Plaintiff seeks a "mandatory injunction" against Defendants because they have allegedly "violated their duty to the public" by keeping "the largest public corruption scandal in US history out of the news," (*id.* ¶ 1), and "$100 million in punitive damages to send the right message to named media Defendants" for their alleged "depraved indifference." (*Id.* ¶ 62.)

The charges made in the complaint were and still are true. The media defendants were shown in black

and white that a New York State Supreme Court judge rewrote the contract description of Petitioner's Manhattan apartment and higher court decision to void the $70-90 million dollars in development rights that were appurtenant to plaintiff's 12th floor and roof unit Manhattan co-op apartment. The media defendants were also shown that higher court judges and former Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus Vance was permitting this to happen. Petitioner repeatedly pressed the media defendants to report on this very serious matter since they represent themselves as "news agencies" that hold those in power accountable. The fact that the courts are being permitted to unlawfully rewrite contracts was certainly news worthy and a matter of national and international concern.

The Court of Appeals made clear the role in duty of the media and its landmark *New York Times v. The United States* Decision stated the following:

> "Only a free and unrestrained press can effectively expose deception in government."
>
> "In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in govern-

> ment. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people . . . ."

The media defendants (and hundreds of other news agencies not listed) violated these expressed duties and kept secret that New York State Courts and law enforcement officials are permitting contracts to be rewritten in the New York State Courts to void what the contract and a higher court decision said on its face.

B. Petitioner's Claims Needed No Investigation. the Evidence Was Shown in Black and White

The Seventh Paragraph Footnote to the Schedule of Units in the Amended 1980 Offering Plan for a commercial Co-op named 450 West 31st Street Owners Corp reads as follows:

> "Seventh Paragraph-NEW-The 12th Floor and Roof Unit Shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof or above the same, to the extent that may from time to time be permitted under applicable law."

The Appellate Division, First Department, February 11, 2010 Decision ended with the following words.

> Pursuant to paragraph 7, that plaintiffs have the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law, unanimously affirmed, without costs.

Justice Kornreich's Supreme Court July 15, 2014 Decision rewrites the above to read:

> It has already been adjudged that while the owners of the unit may have the right to erect additional structures on the roof, that right does not entitle them to use any floor area in doing so (Prior Action, decision and order, Mar 13, 2009 at *2 & *4-*5 ["Nothing herein shall be construed as holding that plaintiffs have the right to use all or any part of the TDRs in connection with such construction or extension"] *Brady v. 450 W. 31st St. Owner's Corp.*, 70 A.D.3d 469, 470 (1st Dept 2010) [holding that the offering plan "reserves for plaintiffs the right. . . . to construct or extend structures on the roof that may be built without the use of the building's development rights."]

All 40 words from the Offering Plan contract and a higher court determination was taken out and replaced by Judge Kornreich's own 70 words. Under the Appellate Division decision, Petitioner had the express and exclusive right to the utilization of the premise's development rights. Under Judge Kornreich's rewording, Petitioner have nothing at all. The Media Defendants, Judge Daniels and Magistrate Kevin N. Fox argue that under the First Amendment the media does not have to report these unlawful acts by those in power if it chooses not to report these unlawful acts by those in power.

C. District Court Judge George B. Daniels Said in His January 10, 2016 Decision the First Amendment Bars and Duty to Publish What the Press Prefers to Withhold

Finally, the Report held that granting the equitable remedy of a mandatory injunction "compelling defendants to publish what they prefer to withhold would run afoul of [D]efendants' First Amendment rights." (Report, at 12.) As the United States Supreme Court has noted:

> The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time. *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258-59 (1974).

Petitioner argued that pursuant to what the Supreme Court ruled in *The New York Times v. The United States* that the media is Duty Bound to report the unlawful and dangerous conduct of those in power. Particularly the Petitioner argued that it is a matter of national security to report and warn the public that higher court justices and law enforcement officials are permitting the courts to unlawfully rewrite contracts to fit their objective. Petitioner went to court seeking an order that those companies that represent themselves as" press: that say they hold those in power

accountable not hide such serious crimes by those in power. Judge Daniels' discarded this argument, and therefore stated the following:

> "Such direction by this Court or any governmental entity as requested by Plaintiff would be exactly the type of interference against which the First Amendment guarantees the freedom of the press and freedom of speech. Therefore, the Report properly held that the relief Plaintiff seeks is barred by the First Amendment. (See Report, at 12 (quoting *Passaic Daily News v. N.L.R.B.*, 736 F.2d 1543, 1557 (D.C. Cir. 1984) (internal citations omitted) ("The Supreme Court has implied consistently that newspapers have absolute discretion to determine the contents of their newspapers.")).)
>
> What has transpired since the start of this litigation serves as petitioner's best evidence of a dangerous *quid pro quo* relationship between those in power and the media. In this case, the attorney's for media defendants never acknowledged that the contract or higher Court decision were unlawfully rewritten and instead make the same false arguments as the judges and law enforcement officials that Petitioners claims were meritless and frivolous.

D. Petitioner's Offering Plan Contract Was Repeatedly Attacked and Rewritten by the New York State Courts for the Benefit of Politically-Connected Real Estate Developers

Petitioner is the owner of a commercial co-op apartment located at 450 West 31st Street, 12th Floor and Roof Unit, New York, NY 10001. The Second Amendment to the Schedule of Units of the Offering Plan contract, which was a condition precedent to making the Offering Plan effective, expressly and exclusively conveys the any permissible development rights that may from time to time be given to the premises to the 12th Floor and Roof Unit for its exclusive utilization.

The Seventh Paragraph Footnote to the Schedule of Units of the Amended Offering Plan, which reads as follows:

> "[Seventh Paragraph—New] The 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law."

Applicable law changed in 2005 pursuant to a rezoning of the area and the creation of the Hudson Yards District of Manhattan. Suddenly, the premise was permitted to construct of extend up to 190,000 square feet of additional development rights on its parcel of land. In 2006, the Co-op Corporation had these rights appraised at $44 million dollars.

In 2007, the Co-op Board of Directors attempted to the sell the premise's development rights to Extell

Development Corp. At that time, Extell offered Petitioner $2.5 million to waive our rights to the development rights in light of the Seventh Paragraph Footnote.

During May 6, 2008 court ordered settlement talks, Justice Friedman had Extell withdraw that offer and replace it with a $500,000 offer from the co-op corporation to waive his rights under the threat that she would make Petitioner "sorry" if he did not accept the offer. Petitioner and his wife refused to be intimidated by the threat and did not waive their rights. During the July 1, 2008 phone conference with the Court and attorneys, Justice Friedman said in essence that she was going to rewrite the contract since the Brady's had refused to waive their rights. As a result, Petitioner's then attorney, Margaret Dale of Proskauer Rose, wrote Justice Friedman a letter the following day, July 2, 2008:

> No authority, whether statutory or precedential, allows a court to ignore or overrule clear and unambiguous terms in an offering plan. In this case, the Court cannot ignore that the new 7th paragraph of the Second Amendment further describes what is included as part of the 12th Floor and Roof Unit. The Court cannot ignore that all of the rights to the space above the Building's roof belong to, and is part of, the 12th Floor and Roof Unit. The rights to all of the space above the Building's roof has been conveyed to the 12th Floor and Roof Unit <u>to the extent that is "permitted by applicable law"</u>—not just the 25,000 square feet that the Defendant Cooperative Corp. reserved for it-

> self. Such language was inserted into the Offering Plan for a reason, and none of the Defendants presents any alternative meaning to the plain language. No authority, whether statutory or precedential, allows a co-op to seize part of a shareholder's unit without consent. No authority, whether statutory or precedential, allows a court to completely disregard multiple experts' undisputed testimony that states that the proposed sale to Extell violates and destroys Plaintiff's rights.

Notwithstanding the absence of any legal authority or rationale, Justice Friedman on July 2, 2008 issued the first Supreme Court decision rewriting Petitioner's contract:

> "The court finds that paragraph 7 is not ambiguous, and that it gives plaintiffs the right to build structures on or above the roof but does not convey air rights to plaintiffs."

This decision shows that after ruling the contract was not ambiguous, the contract removed the words from the contract that said "to the extent that may from time to time be permitted under applicable law," and unlawfully replaced those words with "but does not convey air rights to plaintiffs." The decision made no sense since the right to construct or extend structures above the roof is called "air rights." The decision lead to Extell Development demanding its deposit back for the Co-Op corporation's breach of contract. Justice Friedman's decision caused the Co-op to return the deposit on the adjoining lot and abandon the deal. Thus, Petitioner was successful in

the first round of litigation in preventing the sale of the air rights, which had been his goal.

On November 15 2008 the New York Post journalist Lois Weiss wrote about the failed transaction and the meaning of Petitioner's Contract:

> "Jim Brady, owner of the rooftop entertainment space, Studio 450 in Hudson Yards, is embroiled in a legal battle with his commercial co-op and Extell Development over who owns the penthouse unit's development rights.
>
> "The tussle has already led Extell to back out of its $11 million deal with the co-op and halt work next door on what was to become a nearly 700,000-foot, snazzy glass tower at 360 Tenth Ave. between West 30th and West 31st streets.
>
> "Designed by architect Steve Holl, the CoStar listing pitched by Newmark Knight Frank shows a sleek angular skyscraper hovering just south of the stubby 450 W. 33rd St. that houses the Daily News and the Associated Press.
>
> "Holl's offices, coincidentally, are located right under Studio 450.
>
> "The Extell building was to have a base of 140,000 feet of offices, a hotel and 155 luxury condominiums along with a connection to the hip and coming High Line.
>
> "The optimistic Web listing now says the ground-breaking will be in the first quarter of 2011.

"Brady said that prior to declaring the co-op plan effective in 1980, the sponsor inserted into the second amendment of the offering plan a footnote to the schedule of units that read, 'The 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law.'

"Additionally, Brady's formal co-op proprietary lease states that his block of shares gives him possession of the unit as described in the offering plan.

"When he bought the unit for $5 million in 2005, the building was completely developed and the rights, other than to use the roof as is, were essentially worthless.

"But when the Hudson Yards rezoning plan was finally instituted that year, the building ended up with 38,500 feet for as-of-right development.

"Extell contracted with the co-op board to buy those rights along with the co-op's ability to purchase more development rights through a zoning lot merger.

"That effectively permitted Extell to buy an additional 131,500 feet in bonus rights from the city to construct its tall building next door.

"But Brady and his wife Jane stepped in and said, 'Not so fast!'"

Brady says the co-op corporation doesn't own the roof unit and has no right to sell the development rights conveyed to him through the offering plan and his proprietary lease.

"I'm sitting on a building lot that starts 13 stories up," Brady said. "I want to use these rights. This is a strong, commercial building and can support the construction. I don't want a huge towering building over me. Studio 450 is known for its views."

Last year, courts denied motions to stop the development and on July 2 State Supreme Court Justice Marcy Friedman gave a summary judgment to the co-op.

Brady hired a new attorney, John Siegal of Baker Hostetler, who will re-argue the case tomorrow while an Appellate Division conference is scheduled for Friday.

"Our position that this question can be determined from the plain language of the property description and the law," said Siegal. "If it cannot, then there should be discovery and the sponsor, and any other number of people may have testimony."

Meanwhile, because of the lawsuit, Extell could not close on the contract by June 30, 2008, to meet the old 421a tax program deadline, so it backed out of the project, and the co-op returned its deposit.

Extell still owns the land next door and has a $28 million mortgage from Barclay's.

> Gary Barnett, Extell's CEO, couldn't be reached for comment.
>
> Stuart Saft of Dewey & LeBoeuf, who represents many co-ops but is not involved in this matter, said Brady has a right to at least some of the new development rights and as a result the co-op should have at the very least obtained a waiver.
>
> "The language [in the second amended offering plan] is so broad it would cover any kind of addition to the top of the building, but I don't think it gives Brady the rights to take those development rights to trade them to an adjacent property," Saft said.

On October 16, 2008 oral arguments were held by petitioner for a motion to reargue in front of Justice Friedman. Justice Friedman acknowledged reading the article and granted the motion for reargument. In March 13, 2009 reargument decision, Justice Friedman put all her judicial powers into an ORDERED, ADJUDGED and DECLARATION that again rewrote the contract by surrounding it with judicially-constructed limitations:

> "Pursuant to paragraph 7, plaintiffs, have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be given under applicable law. Provided that: Nothing herein shall be construed as holding that plaintiffs have the right to use all or any part of the TDRs in connection with such construction or extension."

The Appellate Division removed the unlawful provision added to the end of the contract. The First Department's February 11, 2010 decision included a clear and unequivocal conveyance of the utilization of the premise's development rights:

> "that plaintiffs have the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law, unanimously affirmed, without costs."

This decision clarified that the contract provision did not convey ownership of the air rights to Petitioner's block of shares (which was never in dispute) but rather confirmed Petitioner's right to the utilization of the air rights to the extent that may from time to time be permitted under applicable law.

E. The Co-Op's Second Attempt to Sell the Premise's Air Rights

In 2012, the Co-op Corporation again sought to enter into a zoning lot and merger transaction that entailed selling the air rights appurtenant to Petitioner's apartment, along with placing light and air easements over Petitioner's apartment for the benefit of the developer. All attorneys involved with the transaction fully understood that based on the February 11, 2010 decision, they would need a Waiver of Petitioner's rights.

F. The Co-Op and Sherwood Equities Asked Petitioner to Sign a Waiver of the Rights Granted in the February 11, 2010 Decision

The April 2012 "Waiver, Consent and Release" states that the Bradys are being asked to relinquish their rights "For good and valuable consideration, the receipt and sufficiently of which is hereby acknowledged." The only consideration 450 Owners Corp. and Sherwood offered Petitioner was the threat of costly litigation against multi-million dollar companies: the letter stated "your choice not to sign the requested waiver may result in further costly litigation involving 450 West, the purchaser, and you. The purchaser of the development rights would prefer that you sign a waiver with respect to any issues regarding the ownership, control or the right to dispose of 450 West's excess development rights."

G. The Parties to the Contract Have Always Perfectly Understood and Agreed What the Contract Means

Stanley Kaufman, the Co-op's litigation attorney, stated in "Defendant's Reply Memorandum of Law," April 14, 2008, p.5:

> The clear intent was to grant the 12th floor unit owner some latitude in adding additional space, or structures, so long as in doing so, the owner did not violate the local building code, zoning regulations, or other ordinances.

And further:

> The clear and logical meaning of the added footnote number 7 of the Second Amendment was to grant 12th floor owner some latitude

> in adding additional structures, so long as in doing so, the owner did not endanger anyone else's health or safety or violate the building Code, zoning laws or any other laws or ordinances." (*Ibid.* p.28).

And further, Franklin Snitow, Extell's litigation counsel, stated in his "Affirmation for Defendants *Extell Dev. Corp.*", *et al.*, March 18, 2008, p.2 ¶ 3:

> The intent is evidenced in the decision of the original owner of the 12th floor unit to build an 1,800 square foot penthouse on the roof. Thus, the intent of the Amendment is clear on its face." (R: 310).

H. The Sponsor of the Co-op Offering Plan, Arthur Greene, Confirmed the Meaning of the Seventh Paragraph Footnote on August 15, 2016

Petitioner obtained the deposition testimony on August 15, 2016 of the sponsor, who proved Petitioner's underlying claims, further showing that the judges and other public officials that argued that his "intent" of the Seventh Paragraph Footnote to the Schedule of Units was to convey permissible air rights to the 12th Floor and Roof Unit (A.347):

> Q. Getting right to it, could you tell me about the second amendment to the offering plan? It's the seventh paragraph footnote to the scheduling units, where it says: That the 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof or above the roof to the extent that may from

time to time be permitted under applicable law.

Can you tell me what you meant by that footnote?

A. Could you read that again?

Q. Yes. It's the seventh paragraph. It's a new paragraph seven footnote to the schedule of units. And it says: The 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law.

Now, to refresh your memory, this footnote change was a modification that was made in this second and final amendment to the offering plan. It states that it was a final term in which you agreed to declare the foregoing plan effective.

Petitioner can show you the second paragraph footnote to the schedule of units, because you made two other changes at the time. So if you were to interpret the whole communication that would be great.

This is the second amendment, and these are the amended footnotes found on page 2.

(Witness peruses document.)

A. Petitioner believe at the time there was a limitation on what you could add to the building. The building had reached its maximum limit for construction. Probably the

intent was to, if you could build more than—if they approved, you can build more than—you still have to go through co-op to get approval to build, but you can add on if the co-op will give it to you.

Q. Does it say here anything permitting under applicable law is reserved for the 12th floor and roof unit, was that your intent?

A. In the existing space, yes.

Q. And the purpose of reserving this floor area was so that, just to be clear, any permissible development rights or zoning changes or for other purposes that is permitted it was for the exclusive use of that particular 12th floor which Petitioner believe you reserved for yourself; is that true?

A. Yes.

(Transcript p.4:19-6:16).

Petitioner paid for a right, as Commercial Division judge Justice Kornreich stated at a March 18, 2014 Oral Arguments in an underlying case: "The contract is the contract. It wasn't changed when he bought it. He bought that right." (Full Citation *Infra*).

I. The Argument That Petitioner Lost the Prior Litigation Collapsed at the March 18, 2014 Oral Arguments

Joseph Augustine, attorney for the Co-op Board

THE COURT:-which means you're going to have to commit the coop board to tell me: What does Paragraph 7 mean?

MR. AUGUSTINE: It means he has the right to build structures once he submits a plan. And if those structures are permissible by law, such as Department of Buildings, and those plans do not pose a structural risk or any other risk to the building in order to—for him to service the space that he has there, then the board would be inclined to approve it.

[. . .]

THE COURT: But what Petitioner is saying is he does have that right, though, under paragraph 7.

MR. AUGUSTINE: He has—our understanding he has a right to build structures. That's what it says. No one disagrees. The courts all said the same thing, he has a right to build structures.

THE COURT: How would you deal with the decision of the Court and say he has no development rights, he has no air rights, yet he has the right to build? What does that mean? (Transcript, p.9:17-20).

THE COURT: The courts said that he has no air rights, but he has the right. But Petitioner think, perhaps, the courts didn't understand that air rights, FAR, all of that is probably the same things, development rights, so—(Transcript, p.12:9-13).

THE COURT: Petitioner don't know what you said. Nor do Petitioner know what the Court said. (Transcript, p.14:12-13).

THE COURT: But Petitioner is asking you because Petitioner have to in this action decide what the contract means, and Petitioner I'd like your—you to weigh in on that. (Transcript, p.15:25-p.16:2).

THE COURT: The decisions don't—don't address this, because, at least in this Court's mind, Petitioner don't *see* how you can build and build up without going into air rights or—you know, so Petitioner don't understand the decisions. Petitioner I'm asking you for guidance. (Transcript, p.17:18-22).

THE COURT: And the Appellate Division and lower court doesn't say, "You can only build to a certain height," they said "Yeah, he has the right to build up and out but he can't use the air rights," which is really an enigma. (Transcript, p.27:3-29:3).

THE COURT: Petitioner don't understand how you can build a structure on a roof if you have no air rights. (Transcript, p.28:4-5).

MR. BRADY: So the correct reading it's an inconsistent decision. Please square the two, Your Honor. Square—

THE COURT: Petitioner do not know how. (Transcript, p.53:17-19).

THE COURT:—it was the sponsor who put this in, it was the sponsor who owned the penthouse and roof. Perhaps that was his intent. (Tr. p.54:11-20).

J. In Her July 15, 2014 Decision, Justice Kornreich Completely Departed from the Admissions She Made at Oral Arguments and Handed Down a Decision Filled with *Ad Hominem* Attacks and Divorced from the Facts She Herself Had Acknowledged

> "It is clear from the papers and the transaction's history that Brady acted in bad faith in bringing the instant cases." (p.21).
>
> "His misinterpretation of prior judgment, his feigned ignorance or the origin or the meaning of the phrase "transferable development rights," and his argument that a decision, which he appealed to no avail, is not binding are but a few examples of the frivolous arguments made in the instant actions." (p.21).
>
> "In short, Brady has dragged more than twenty parties into court to litigate matters that have already been determined and claims that lack any substance." (p.22).
>
> "The trial court and the appellate court courts in the Prior Action have denied him such control. Undeterred, he has ignored these courts' rulings and brought these meritless actions, abusing the judicial process." (p.23).
>
> "This is a near perfect example of frivolous conduct that warrants defendants request for the imposition of sanctions." (p.23).

In the July 15, 2014 decision, the Court further made the following admissions, which prove that she knew all along that Petitioner's claims were correct

and that the co-op had violated Petitioner's rights and tortuously interfered with Petitioner's contract when it sold the air rights without a Waiver from Petitioner and his wife:

> "Strictly speaking, Brady is correct that the question of whether such an easement interferes with his right to build structures on the roof or otherwise permitted by applicable law has never been determined and so is not barred." (July 15, 2014 decision, p.15).
>
> "Brady correctly notes that the issue of whether the sale to Extell violated his rights was never reached, and that the issue of whether the sale of the air rights by 450 Owners Corp. to Sherwood violated Brady's rights could not have been reached in the prior actions." (July 15, 2014 decision, p.19).

K. In a July 15, 2014 Decision, Justice Kornreich Acknowledged That Sherwood Equities and the Co-op Tortuously Interfered with Petitioner's Contract—Yet She Dismissed Those Causes of Action and Sanctioned Petitioner

Initially, the Co-op and Sherwood sought to obtain a waiver from the Brady's regarding the air rights. However, when Brady refused to sign the waiver as presented, the Co-op and Sherwood proceeded without his consent. (July 15, 2014 Decision, page 5)

That the Co-op or Sherwood initially sought a waiver from Brady does not constitute an "admission" that the ZLDEA interfered with any of Brady's rights. Indeed, according to Brady, he was specific-

ally told by the Co-op that "the transaction will be consummated with or without your waiver."

The elements for a tortious interference with contract claim are defined in New York state as: (1) the existence of a valid contract between the parties; (2) the defendant must have had knowledge of the contractual agreement; (3) the alleged interference must have caused a breach of the contract; (4) the interference must be both intentional and improper; and (5) plaintiffs must establish they suffered damages as a result of the alleged contractual interference. *Amaranth LLC v. J.P. Morgan Chase & Co.*, 71 A.D.3d 40, 47 (1st Dep't 2009).

It is clear that Justice Kornreich understood that the transaction between Sherwood and the Co-op violated Petitioner's rights under the Offering Plan and the Appellate Division decision. In order to rule against Petitioner in light of her numerous admissions, she literally rewrote the contract.

L. The Transcript of the September 10, 2014 Hearing on the OSC Shows That Justice Kornreich Did Not Deny That She Falsified the Prior Decision

> THE COURT: So, Petitioner have read your papers, and let me say that Petitioner stand by Petitioner's decision. Petitioner think Petitioner's decision is legally required.
>
> The same request, the same legal request, really, was made in another action in front of another judge, and Petitioner am bound by that decision. It went all the way up to the Court of Appeals, so Petitioner stand by Petitioner's previous decision.

Petitioner am not going to stay enforcement of the sanctions. Petitioner believe, Petitioner really believe that bringing the action over and over and over again both wastes the court's time, counsel's time, and your time, and it is frivolous. (Transcript p.4:16-26).

THE COURT: So, Petitioner don't believe that there is any reason for me to recuse myself. Petitioner don't believe that any decision Petitioner made previously was tainted in any way. Petitioner believe this case is over at this point, so Petitioner am denying your application—

BRADY: It figures.

THE COURT:—for your order to show cause.

BRADY: That figures, your Honor.

THE COURT: Pardon?

BRADY: Petitioner said that figures. Of course you would do that. So why don't we address the fact that it's undisputed that you falsified the prior decisions.

THE COURT: That Petitioner falsified?

BRADY: You falsified the prior decisions.

THE COURT: Sir, at this point Petitioner would admonish you.

BRADY: Petitioner I'd like it to be on the record, you took out the part, your Honor, that said that "pursuant to paragraph 7, plaintiff has, in addition to the utilization of the roof, the right to construct or extend structures on

> the roof or above the roof to the extent that may from time to time be permitted under applicable law." This Court took that out of its decision to square it against me.
>
> THE COURT: Sir, you can say whatever you wish to say at this point. You've said it. At this point the record is closed. Your application is denied. Please step back.
>
> BRADY: Thank you, your Honor. More evidence.

(Transcript 5:1-6).

M. Petitioner's Claims Are Self-Evident, He Was the Victim of Crime, and NYAG's Failure to or Even Investigate the Crime Is Evidence of Collusion and Corruption

The Seventh Paragraph Footnote to the Schedule of Units reads as follows:

> "Seventh Paragraph-NEW-The 12th Floor and Roof Unit Shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof or above the same, to the extent that may from time to time be permitted under applicable law."

The Appellate Division, First Department, February 11, 2010 Decision ended with the following words.

> Pursuant to paragraph 7, that plaintiffs have the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law, unanimously affirmed, without costs.

Justice Kornreich's Supreme Court July 15, 2014 Decision rewrites the above to read:

> It has already been adjudged that while the owners of the unit may have the right to erect additional structures on the roof, that right does not entitle them to use any floor area in doing so (Prior Action, decision and order, Mar 13, 2009 at *2 & *4-*5 ["Nothing herein shall be construed as holding that plaintiffs have the right to use all or any part of the TDRs in connection with such construction or extension"] *Brady v. 450 W. 31st St. Owner's Corp.*, 70 A.D.3d 469, 470 (1st Dept 2010) [holding that the offering plan "reserves for plaintiffs the right. . . . to construct or extend structures on the roof that may be built without the use of the building's development rights."]

All 40 words from the higher court determination was taken out and replaced by Judge Kornreich's own 70 words. Under the Appellate Division decision, I have the right to the utilization of the premise's development rights. Under judge Kornreich's rewording, Petitioner have nothing at all.

REASONS FOR GRANTING THE PETITION

I. JUSTICE DANIELS JANUARY 10, 2016 DECISION SHOULD NOT HAVE BEEN AFFIRMED BY THE SECOND CIRCUIT COURT OF APPEALS

Judge Daniels Decision is completely silent on addressing the fact that the contract description of Petitioner's Manhattan apartment was unlawfully rewritten to void the $70-90 million worth of air rights that were contractually appurtenant to his apartment.

The media defendants, rather then report on the unlawful acts taking place in the New York Court's are shown making false arguments that Petitioner was repeatedly arguing that he "owned" the premise's development rights which was untrue. was wrong. The Court's decision stated:

> "Plaintiff filed his first lawsuit in state Court in 2007, alleging that he owned the air rights to his commercial co-op apartment by virtue of the contract whereby he acquired the top-floor unit of the building."

In her July 2, 2008 decision, Justice Marcy Friedman stated the following:

> "Indeed, plaintiffs themselves do not take the position that they are the owners of the air rights. They clarify that they "do not contend that the 12th Floor and Roof Unit can sell or transfer these [TDR] rights to adjoining landowners, but that the Cooperative Corporation cannot sell or transfer these

> rights to anyone without plaintiff's consent." (*James & Jane Brady v. 450 West 31st Owners Corp.*, Index No. 603741/07, July 2, 2008).

That was ten years ago. Not once since that time have Petitioner or any attorney representing him argued that Petitioner "own" the premise's development rights.

If Petitioner had lost the 2008 litigation, which the media defendants argue the Co-op would not have asked for a waiver in 2012; AND Justice Kornreich would not have had to rewrite the February 11, 2010 decision to void what it said on its face.

II. IT IS OF NATIONAL IMPORTANCE THAT THE PRESS MAKE SURE CONTRACTS BE ENFORCED AS WRITTEN IN THE COURTS

Practically every American adult has numerous contracts with multiple companies in the course of everyday life. The economy and the functioning of society depend on the inviolability of contracts and the right of private citizens to enter into contracts that represent the intention of the parties, and are then enforced by the courts as written. As this case shown, New York State courts as well as law enforcement officials, are ignoring their duty to enforce contracts as written and are allowing courts to rewrite contracts for the benefit of political donors and powerful developers. This Court cannot sanction what is occurring in New York State, where real estate contracts in particular represent huge, multi-billion dollar investments from around the world.

One of the most basic principles of New York contract interpretation is that "a court is not free to alter the contract to reflect its personal notions of fairness and equity." As the Court of Appeals held in *Greenfield v. Philles Records*, 780 N.E.2d 166 (NY: Court of Appeals (2002), a contract is unambiguous if the language it uses has "a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" (*Breed v. Insurance Co. of N. Am.*, 46 N.Y.2d 351, 355 (1978), *rearg. denied* 46 N.Y.2d 940 (1979)). Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity (*see e.g.*, *Teichman v. Community Hosp. of W. Suffolk*, 87 N.Y.2d 514, 520 (1996); *First Natl. Stores v. Yellowstone Shopping Ctr.*, 21 N.Y.2d 630 (2008).

New York State contract law is very clear that judges cannot add or remove words from an unambiguous contract. The binding law and authority on contract law in New York State is as follows:

> "When parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms." *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162 10 (1990). And "Courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing." "In the absence of any ambiguity, we look solely

> to the language used by the parties to discern the contract's meaning." *Vermont Teddy Bear v. 538 Madison Realty Co.*, 308 A.D.2d 33 (2004).

Making a new contract between the parties is precisely what Justice Kornreich did in her July 15, 2014 decision. The media defendants had a duty to protect Petitioner and the Offering Plan contract as promised and registered in the Office of the Attorney General in 1980. The express duty of the free press is to hold those in power accountable and not hide their unlawful acts. This is a matter of national importance and international importance

III. EXCUSES CANNOT BE USED TO DISCARD THE FOURTEENTH AMENDMENT

The media defendant's knew of Attorney General Eric Schneiderman's failure to investigate Petitioner's claim and failure to prepare or submit any report or internal documentation of any investigation was a clear violation of his Fourteenth amendment rights.

In the present case there was corruption quid pro quo from the very beginning to keep the case from being investigated. Petitioner could not challenge the Attorney General's findings and recommendation in an Article 78 Proceeding because Mr. Schneiderman's office made no findings. In fact, one of the NYAG's responses to Petitioner's legal claim is to admit they took no action and did nothing when shown certain judges had defrauded me of the rights in Petitioner's Offering Plan contract.

The Attorney General is duty-bound to enforce the 5th and 14th Amendments. The Attorney General

and media defendants saw that Petitioner's contract was unlawfully rewritten to void his contractual property rights. There would be no purpose of having a 5th and 14th Amendment if the Attorney General or other law enforcement officials could simply say they refused to give someone equal protection under the law and turn their backs on them without explanation.

IV. THE PRESS DEFENDANTS COLLUDED WITH THOSE IN POWER AND USED THE SAME FALSE INSTRUMENTS, FALSE FACTS AND MADE THE SAME BLATANTLY DELIBERATELY DECEPTIVE STATEMENTS AND PERSONAL ATTACKS ON PETITIONER

Assistant Attorney general Michael Berg said "The New York State Courts squarely and repeatedly rejected Plaintiff's claim, and after he brought successive cases raising essentially the same claim, sanctioned him for engaging in "a near perfect example of frivolous conduct." (NYAG Memo in Support of Motion to Dismiss, p.5). The Attorney General knows these statements are false yet passes them along to the Court as if they facts. On page 3 of his Opposition Mr. Berg states the following:

> "Plaintiff cites the August 15, 2016 deposition testimony of the co-op sponsor, Arthur Greene, concerning the meaning of the contractual term concerning the alleged development rights. These questions of contract interpretation were resolved in Plaintiff's prior state court litigation. *See, e.g., Brady v. 450 West 31st Street Owners Corp.*, 70 A.D.3d 469 (1st Dep't 2010)."

The same exact type of false statements were made by the press defendants

V. PETITIONER MEETS THE CRITERIA FOR A MANDATORY INJUNCTION

"A mandatory preliminary injunction should issue only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief. *Cacchillo v. Insmed, Inc.*, 638 F.3d 401 (2nd Cir. 2011)."

Petitioner needed public scrutiny to fight back against those in power. This Court said the role of the media is to serve the governed from the governors and to hold those in power accountable. Public scrutiny was and still is needed. It is petitioner that has a first amendment right to the protection of the free press.

VI. IT IS TREASONOUS AND A DANGEROUS BETRAYAL OF PUBLIC TRUST FOR THE FREE PRESS TO CENSOR ITSELF AND HIDE THE UNLAWFUL ACTS OF THOSE IN POWER

Very dangerous things happen when the press voluntarily hides the unlawful acts and crimes of those in power. The documents provided by the media defendants in these proceedings proves a quid pro quo between the judiciary, law enforcement and the press. There must be a threshold where the first amendment does not permit the press to keep secrets. The press just like anyone else that colludes in a scheme should be held financially responsible for the damages its collusion causes the victim of the scheme.

CONCLUSION

For the reasons set forth above, this Court should grant the Petition for Certiorari. The Supreme Court must be the moral compass of the United States of America and make sure that our institutions are working with the checks and balances that are needed to protect our democracy. The free press must explain why it is keeping secret information of national and international interest a secret from the public. Most of the media defendants speaks of real estate transactions on a daily bases so there is no fathomable justifiable reason that they would not warn the public that New York State Justices are rewriting the Offering Plan contract description of apartment's to void what the contracts say on their face.

If any institution must remain under public scrutiny by the press it is the Judiciary since these individuals have great power over peoples lives and property.

Respectfully submitted,

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