

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ORLEANS

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COUNTY OF ORLEANS,

Petitioner,

**VERIFIED PETITION**

-against-

Index No.: \_\_\_\_\_

GENESEE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY d/b/a GENESEE  
COUNTY ECONOMIC DEVELOPMENT CENTER;  
GENESEE GATEWAY LOCAL DEVELOPMENT  
CORPORATION; STAMP SEWER WORKS, INC.;  
G. DEVINCENTIS & SON CONSTRUCTION CO.,  
INC; CLARK PATTERSON LEE; and  
HIGHLANDER CONSTRUCTION,

Respondents.

\_\_\_\_\_  
Petitioner, the COUNTY OF ORLEANS, by its attorneys, Lippes Mathias LLP, as and for  
its Petition pursuant to Article 78 of the CPLR and pursuant to Section 3001 of the CPLR  
respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. This hybrid Article 78/Declaratory Judgment action seeks a determination that the  
Respondents violated the law; acted arbitrarily and capriciously and in excess of their authority; a  
Declaratory Judgment as to the actions of the Respondents and the rights of the parties as well as  
injunctive relief enjoining Respondents from continued construction of the “force main”,  
specifically into and upon the lands of Orleans County without its consent and further violation of  
law.

2. Genesee County Industrial Development Agency d/b/a Genesee County Economic  
Development Center (hereinafter “GCEDC”), has been conspiring with the other Respondents to

violate, *inter alia*, General Municipal Law §854(4) by financing, engineering and constructing a nine (9) mile sewer line (a/k/a the “force main”) into and through the lands of Orleans County without the consent of Orleans County solely to allow private companies leasing at the Science and Technology Advanced Manufacturing Park (“STAMP”) <sup>1</sup> Project site in Genesee County, to discharge six (6) million gallons of contaminated water (each and every day) into Orleans County lands and navigable waters despite the strenuous objection(s) of the governing body of Orleans County and other affected entities and communities. <sup>2</sup>

3. GCEDC has improperly financed those portions of the STAMP Project which affect Orleans County, including but not limited to engineering contracts, construction contracts, improper easement purchases, improper formation of various entities and improper eminent domain proceedings in derogation of law.

4. As a matter of law, GCEDC is specifically prohibited from doing precisely what it is doing. As is more fully set forth below, in a concerted effort to circumvent the prohibitions of General Municipal Law §854(4), the Respondents are, and have been, conspiring to allow the GCEDC to construct an otherwise illegal nine (9) mile sewer line into Orleans County enabling the discharge of polluted water<sup>3</sup> into Orleans County without its consent, without adequate protections for the environment and over the objections of Orleans County.

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<sup>1</sup> STAMP is an approximately 1,262-acre industrial mega-site located in the Town of Alabama in Orleans County. Through significant public funding, GCEDC has been actively pursuing the development of the site since 2010. No part of the STAMP site is in Orleans County.

<sup>2</sup> The Tonawanda Seneca Nation, represented by Earthjustice, initiated Article 78 proceedings against GCEDC, several GCEDC officers, and Plug Power, Inc. in 2021 (*See Tonawanda Seneca Nation v. Genesee County Economic Development Center et al.*). The Sierra Club and Buffalo Niagara Waterkeeper have also voiced vehement opposition to the development of STAMP and the inherent risk it poses to the adjacent Iroquois National Wildlife Refuge and Tonawanda Seneca Nation lands.

<sup>3</sup> “Polluted water” in this context is significantly worse than ordinary sewage. In fact, it likely includes per- and polyfluoroalkyl substances (PFAS) a/k/a “forever chemicals.” These toxic compounds are resistant to water, heat, and grease and do not naturally break down in the environment or human body.

See <https://www.hsph.harvard.edu/news/hsph-in-the-news/protecting-against-forever-chemicals/>

5. Respondents have been engaged in a conspiracy not only to violate, *inter alia*, General Municipal Law §854(4) and Transportation Corporations Law §§121 and 124, but also to defraud the residents of Orleans County and the citizens of New York State in general by misusing millions of taxpayer dollars to fund an unauthorized project all while acting outside of their respective authority.

6. Accordingly, Petitioners are seeking an Order enjoining the Respondents from taking any further action to advance the “force main” construction, including but not limited to preliminary and permanent injunctive relief as well as a Declaratory Judgment that their actions, as more fully detailed below, were *ultra vires* and thus null and void.

### PARTIES

7. At all times relevant to this Petition, Orleans County is a municipal corporation formed pursuant to the Laws of the State of New York.

8. At all times relevant to this Petition, Respondent GCEDC is an Industrial Development Agency (hereinafter “IDA”) created by statute and organized under Article 18-a of the General Municipal Law; specifically, GML §895-e.

9. At all times relevant to this Petition, Respondent Genesee Gateway Local Development Corporation (hereinafter “GGLDC”) purports to be a not-for-profit local development corporation organized under § 1411 of the Not-For-Profit Corporation Law.

10. At all times relevant to this Petition, the sole member of Respondent GGLDC is the GCEDC.

11. At all times relevant to this Petition, Respondent Stamp Sewer Works Inc. (hereinafter “SSW”) purports to be a Transportation Corporation organized under § 3 of the Transportation Corporations Law.

12. In January 2021, GGLDC purported to form STAMP Sewer Works Inc. Respondent GGLDC is the sole shareholder of SSW.

13. Upon information and belief, at all times relevant to this Petition, Respondent G. DeVincentis & Son Construction Co., Inc. is a domestic corporation with its principal place of business at 7 Belden Street, Binghamton, New York 13903. G. DeVincentis & Son Construction Co., Inc. is named solely as a necessary party as its rights may be affected by the determination of this action.

14. Upon information and belief, at all times relevant to this Petition, Respondent Clark Patterson Lee is a New York professional services corporation with its principal place of business at 205 Saint Paul Street, Suite 500, Rochester, New York 14604. Clark Patterson Lee is named solely as a necessary party as its rights may be affected by the determination of this action.

15. Upon information and belief, Respondent Highlander Construction is a domestic corporation with its principal place of business at 5774 Kester Road, Memphis, New York 13112. Highlander is named solely as a necessary party as its rights may be affected by the determination of this action.

#### **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction pursuant to CPLR § 7804(b) and 506(a-b) because events material to Petitioner's causes of action occurred in Orleans County.

17. Venue is proper in the Supreme Court, Orleans County pursuant to CPLR § 506(b) because events material to Petitioner's causes of action occurred in the Eight Judicial District.

#### **STANDING**

18. Petitioner has standing to bring this proceeding by virtue of its status as the governing body of Orleans County whose rights are directly impacted by Respondents' actions.

Additionally, Petitioner is the owner of two easements Respondents need in order to complete the construction. Copies of the duly recorded easements are attached as Exhibit A.

### **FACTUAL BACKGROUND**

19. In 2010, over thirteen (13) years ago, the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Center (“GCEDC”) became the lead agency for the development of the Western New York Science & Technology Advanced Manufacturing Park (“STAMP”). The GCEDC has defined the development of STAMP as a “Project” pursuant to General Municipal Law. GCEDC re-established itself as lead agency in September 2022. *See* GCEDC Resolution attached as Exhibit B.

20. GCEDC intends to construct a Wastewater Treatment Facility (“WWTF”) solely to accommodate the needs of its STAMP tenants. The current design includes the construction of a “force main” from the STAMP site in Genesee County to Oak Orchard Creek in Orleans County into which GCEDC plans to discharge six (6) million gallons of its private tenants’ wastewater every day.<sup>4</sup> This necessitates running sewer lines out of Genesee County and into and through Orleans County.

21. Orleans County never consented to this project.

22. GCEDC has been using its funds not only to finance the actual engineering and construction of the force main in Orleans County but also to finance all the ancillary proceedings, including, as is more fully set forth below, paying for easements in Orleans County to effectuate the construction; conspiring with GGLDC to create a sham sewer works corporation solely to

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<sup>4</sup> Oak Orchard Creek originates in the Alabama Swamp and flows north directly through Orleans County, emptying in Lake Ontario. Oak Orchard Creek is located entirely within Orleans County.

obtain land in Orleans County; and conspiring with SSW to commence Eminent Domain Proceedings to obtain land in Orleans County (which GDEDC was prohibited from doing itself).

23. General Municipal Law §854(4), which governs the GCEDC, provides that “no agency shall use its funds or provide financial assistance in respect of any project wholly or partially outside the municipality for whose benefit the agency was created **without the prior consent thereto by the governing body** or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located, and such portion of the project located outside such municipality for whose benefit the agency was created shall be contiguous with the portion of the project inside such municipality.” (emphasis added)

24. Indicia of the Respondents’ conspiracy can be found by simply looking at their Board members. GCEDC and SSW Boards are comprised of the identical members, holding the identical titles.

25. Respondent GCEDC’s Board of Directors is comprised of Peter Zeliff (Chairman), Paul Battaglia (Vice Chairman), Steve Mountain (Secretary), Tim Hens (Treasurer), Marianne Clattenburg, Robert Crossen, and Craig Yunker.

26. Respondent SSW’s Board of Directors is comprised of Peter Zeliff (Chairman), Paul Battaglia (Vice Chairman), Steve Mountain (Secretary), Tim Hens (Treasurer), Marianne Clattenburg, Robert Crossen, and Craig Yunker.

27. Respondent GGLDC’s board members are Don Cunningham (Chairman), Jonathan Tetter (Vice Chairman), Sarah Noble-Moag (Secretary), Greg Torrey (Treasurer), Paul Battaglia, Mark Brooks, Marianne Clattenburg, Craig Yunker, and Peter Zeliff.

28. Four (4) of the nine (9) members of Respondent GGLDC’s Board of Directors also sit on Respondent GCEDC’s Board of Directors.

29. GGLDC is a subsidiary of GCEDC and it is the sole shareholder of SSW.

**GCEDC IS ILLEGALLY FUNDING A PROJECT OUTSIDE OF ITS JURISDICTION**

30. As a matter of law, GCEDC has no legal right or authority to fund a project in Orleans County absent Orleans County's consent.

31. The Orleans County Legislature has never given GCEDC consent to finance or undertake this project in Orleans County.

32. GCEDC is and has been the only party that has solicited, awarded and paid for the contracts for, *inter alia*, engineering and construction of the force main.

33. For example, on March 25, 2021 GCEDC awarded G. DeVincentis & Son Construction Co., Inc. (hereinafter "DeVincentis") a \$9,777,000.00 contract for construction of a portion of the force main. A copy of Respondent GCEDC's Notice of Award to DeVincentis dated March 25, 2021 is attached as Exhibit C.

34. In 2021 GCEDC requested bids for "installing 18,300LF of 18-inch and 20-inch force main via open cut (14,400 LF) and directional drilling (3,900 LF) methods, along NYS Route 63, from the northern refuge boundary to the Oak Orchard discharge location north of Shelby Center (in Orleans County)." A copy of the GCEDC STAMP Committee's May 4, 2021 meeting minutes are attached as Exhibit D. *See* Exhibit D, at p. 2-3.

35. This request for bids clearly contemplated construction in Orleans County, thus evidencing GCEDC's intent to finance a project in Orleans County without its consent in violation of GML 854(4).

36. The low bid submitted to GCEDC was from Highlander Construction, Inc. of Memphis, New York in the amount of \$5,193,445.00. At the May 6, 2021 GCEDC Board Meeting, the Board voted unanimously to award the bid to Highlander and committed \$2,600,000 towards completion of the contract. A copy of GCEDC's Board Meeting minutes from May 6, 2021 is attached as Exhibit E. *See Exhibit E*, at p. 8-9.

37. In 2022, GCEDC paid Highlander Construction \$892,055.12 towards the contract. A copy of GCEDC's 2022 PARIS Procurement Report is attached as Exhibit F. *See Exhibit F*, at p. 15. This payment violated GML 854(4)

38. On September 5, 2019 GCEDC awarded Clark Patterson Lee a non-competitive bid contract in the amount of \$900,000 for "STAMP: Engineering Services for Design & Permitting of 6MGD Big Water System". In 2022, GCEDC paid CPL \$103,145.00 towards that contract. *See Id*, at p. 7. This payment violated GML 854(4).

39. On March 25, 2021 GCEDC awarded Clark Patterson Lee another non-competitive bid contract in the amount of \$560,000 for "STAMP: Engineering Services Related to Construction of Force Main." GCEDC paid CPL \$27,160 towards that contract in 2022. *See Id*. This payment violated GML 854(4).

40. The contract between GCEDC and CPL clearly contemplates construction within Orleans County as that is where the "force main" is located.

41. Because GCEDC could not obtain the consent of Orleans County to construct the force main, it began illegally acquiring easements required for the construction directly from property owners in Orleans County. Again, in violation of GML §854(4).



42. Since 2021, despite the prohibitions of GML, GCEDC has purchased at least eighteen (18) permanent and temporary easements over properties in Orleans County for the purpose of constructing the force main.

43. In what can only be classified as an intentional and blatant disregard for the statutory limits of its authority, during its May 4, 2023 Board Meeting, GCEDC allocated \$20,000.00 from the \$33,000,000.00 fund of public money to secure “Permanent Easement 3” (“PE-3”) and “Temporary Easement 5” (“TE-5”), both of which are located in Orleans County, “[i]n conjunction with the installation of the force main from the STAMP site to the direct discharge point at Oak Orchard Creek [because] there are several easements needed.” A copy of GCEDC’s May 4, 2023 Board Meeting minutes is attached as Exhibit G. The purchase of these easements violated GML 854(4).<sup>5</sup> See Exhibit G, at p. 9.

44. On or about June 30, 2023 GCEDC recorded PE-3 and TE-5 with the Orleans County Clerk. A copy of PE-3 is attached as Exhibit H. A copy of TE-5 is attached as Exhibit I.

45. The language of the easements clearly establishes that GCEDC, as Grantee, “intends to construct, install and maintain a post treated effluent force main facility and related appurtenances (the ‘Facility’) for the benefit of Grantee’s project known as the Western New York Science and Technology Advanced Manufacturing Park (the ‘STAMP Project’) on lands adjacent to Grantor’s Premises.” See Exhibit H, at p. 2; Exhibit I, at p. 2.

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<sup>5</sup> PE-3 is a permanent easement allowing the pipeline to run through the property. TE-5 is a temporary easement needed for construction and expires December 31, 2024.

46. GCEDC directly funded its acquisition of easements in Orleans County for the express purpose of developing a project outside of Genesee County without Orleans County's consent. Again, in violation of GML 854(4).<sup>6</sup>

47. That the construction of the force main in Orleans County is GCEDC's project (versus STAMP Sewer Works) is irrefutable.

48. On September 1, 2021, in a letter to various agencies, GCEDC specifically stated that it would be constructing a WWTF which included a force main along Route 63 discharging into Old Orchard Creek. A copy of the September 1, 2021 letter from Mark Masse is attached as Exhibit J.

49. The GCEDC formed the Genesee Gateway Local Development Corporation ("GGLDC") pursuant to Section 1411 of the Not-for-Profit Corporation Law (N-PCL) and is the sole member of GGLDC.<sup>7</sup>

50. As an IDA, the GCEDC is specifically prohibited from forming a not-for-profit corporation such as the GGLDC.

51. GGLDC was purportedly created pursuant to Section 1411 of the Not-for-Profit Corporation Law (N-PCL). That statute specifically enumerates the powers of a local development corporation and specifically provides that any such corporation shall have **no** other powers than those set forth in the statute.

52. In January 2021, GGLDC formed the STAMP Sewer Works, Inc. ("SSW") which purports to be a Transportation Corporation.

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<sup>6</sup> Both PE-3 and TE-5 are stamped: RECORD AND RETURN TO: Anthony J. Iacchetta, Esq., Phillips Lytle LLP, 1400 First Federal Plaza, Rochester, New York 14614 See Exhibit H, at 2; Exhibit I, at 2.

<sup>7</sup> GGLDC By-Laws Article II, Section 1.

53. Nowhere in the statute is an LDC permitted to form corporations. GGLDC lacked the authority to form SSW, and it therefore SSW lacks any authority to take any action.

54. SSW's self-proclaimed mission is "to operate and maintain an on-site wastewater treatment system for sanitary sewer waste from tenants within the STAMP site and the Hamlet of Alabama. Stamp Sewer Works Inc will also own operate and maintain an outfall pump station and force main to accept post treated processed wastewater from industrial tenants within the STAMP site".<sup>8</sup>

55. Per § 121 of the Transportation Corporations Law, "A sewage-works corporation shall supply each city, town, village or other municipal area or district wherein such corporation operates, and the inhabitants therein, with facilities or make provision for the collection, treatment and disposal of sewage at fair, reasonable and adequate rates agreed to between the corporation and the local governing body or bodies..."

56. By its own admission, SSW is in violation of §121 of the Transportation Corporations Law as it does not provide any collection, treatment or disposal of sewage for the residents of Orleans County nor the Town of Shelby.

57. SSW has never been involved in the design, engineering, or construction of the WWTF or the force main. It has had no involvement other than attempting to improperly exercise its alleged powers of eminent domain to take the three (3) easements for the benefit of GCEDC.

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<sup>8</sup> STAMP Sewer Works Corp. NYS Local Public Authority Mission Statement and Measurement Report dated January 1, 2022-December 31, 2022.

58. SSW does not appear to have obtained the necessary County Health Department approvals<sup>9</sup>, does not appear to have the other necessary permits to undertake the contemplated construction.<sup>10</sup>

59. Moreover, as is established by its balance sheet as of March 31, 2023, SSW had total assets of \$24,949.64, which is insufficient to even pay for the now-tabled eminent domain proceedings, much less to pay for any construction of sewer lines. A copy of SSW's balance sheet dated March 31, 2023 is attached as Exhibit K.

60. Despite its lack of cash on hand, on April 24, 2023, SSW adopted a proposal by Phillips Lytle, LLP to provide legal services associated with, among other things, force main installation and obtaining easements via eminent domain estimated to range from \$70,000 to \$90,000 well in excess of the less than \$25,000 on hand at SSW at the time. A copy of SSW's Board Meeting minutes from April 24, 2023 is attached as Exhibit L. *See* Exhibit L, at p. 2.

61. Notably, on February 2, 2023, the GCEDC Board adopted the exact same proposal by Phillips Lytle, LLP for the exact same legal services, to wit: associated with, among other things, force main installation and obtaining easements via eminent domain.<sup>11</sup> A copy of GCEDC's Board Meeting minutes from February 2, 2023 is attached as Exhibit M. *See* Exhibit M, at p. 9.

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<sup>9</sup> "A local governing body shall not consent to the establishment of a sewage works corporation in any municipality unless there shall first be filed with the Department of Health... Having jurisdiction, maps and specifications of the proposed system and such department shall have given its approval thereof". Trans. Corp. Law §117

<sup>10</sup> Although the minutes of the GGLDC board meeting from October 27, 2020 state that such approvals were received, there is no documentary evidence to support that statement. The materials indicate that requests for approval were made however there is no indication that such approvals were granted by either the Genesee County or Orleans County health departments.

<sup>11</sup> See February 2, 2023 GCEDC Meeting minutes Items 6.3 and 6.4

62. SSW is nothing more than a sham corporation created by GCEDC's illegal subsidiary, GGLDC, to allow GCEDC to circumvent to prohibitions against it obtaining land in Orleans County.

63. GCEDC lacked authority to form GGLDC and in turn, GGLDC lacked authority to form SSW. Thus, any actions taken by either GGLDC or SSW are null and void – including the commencement of the eminent domain proceeding and conducting the ensuing public hearing.

**RESPONDENTS ILLEGALLY NOTICED, FUNDED, AND HELD THE EMINENT  
DOMAIN PUBLIC HEARING**

64. SSW published a Notice of Eminent Domain Public Hearing in the July 9 and July 16, 2023 issues of the Lake Country Pennysaver. A copy of the Notice of Public Hearing is attached as Exhibit N.

65. The Notice states that SSW was commencing eminent domain proceedings to acquire two easements in Orleans County for the “purpose of...constructing...a “force main” ...which shall service the Western New York Science and Technology Advanced Manufacturing Park (“STAMP”) located in the Town of Alabama, County of Genesee, New York...by providing critical infrastructure to STAMP...and ensuring that STAMP is equipped with an adequate sewage disposal system.” Id.

66. The Eminent Domain Public Hearing (“Hearing”) was held at the Town of Alabama Volunteer Fire Department in Genesee County on July 27, 2023.

67. Inasmuch as SSW, by its own “mission statement” is in violation of Trans. Corp. Law §121, its noticing and conducting of the Hearing was a violation of law, arbitrary and capricious and outside of its authority.

68. The Hearing, besides being wholly improper, clearly supports the allegations of this Petition.

69. Notably, the first speaker at the Hearing, purportedly being conducted by SSW, was GCEDC Senior Vice President of Operations, Mark Masse. A video of the Eminent Domain Public Hearing is attached as Exhibit O.<sup>12</sup>

70. Mr. Masse is not, nor has he ever been, an employee, officer, or board member of SSW and thus his speaking on behalf of SSW in support of the taking is further evidence that SSW is nothing more than a sham corporation created solely to allow GCEDC to do that which it cannot – take land in Orleans County.

71. There was no testimony from a representative of SSW about how the taking was “necessary for the purposes of its incorporation” as is required for condemnation proceedings under the Transportation Corporations Law §124.

72. Andrew Kosa, an engineer with Respondent Clark Patterson Lee, provided testimony about the force main. SSW has no contract with Clark Patterson Lee, but GCEDC has many contracts with them. The fact that GCEDC’s consultant testified on behalf of SSW as to the force main further demonstrates the sham nature of the entire proceeding.

73. Mr. Kosa further stated, “The service life [of the pipe] is generally fifty (50) to one hundred (100) years.” *See* Exhibit O, at 32:05.

74. Plainly interpreting Mr. Kosa’s assessment of the service life of the pipe, Respondents will eventually have to fund and conduct further construction in Orleans County.

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<sup>12</sup> An electronic copy of Exhibit O will be promptly delivered to the Court and Respondents upon filing of this Petition. Exhibit O is immediately accessible at the following link:

<https://www.youtube.com/watch?v=4JT7aPvgQCc>

75. In total, Clark Patterson Lee was awarded \$2,885,000.00 in contracts by Respondent GCEDC from 2019 to 2021. A copy of GCEDC's 2022 PARIS Report dated February 24, 2023 is attached as Exhibit P. *See* Exhibit P, at p. 6-8.

76. At the Eminent Domain Public Hearing, eighteen (18) private citizens spoke in opposition to the proposed easements (and the STAMP project, altogether). Petitioner also appeared in opposition to the taking and submitted a written statement. A copy is attached as Exhibit Q.

77. Aside from Mr. Masse and Respondents' counsel and engineer, no one spoke in favor of SSW acquiring the easements or the STAMP project.

78. Tellingly, when the validity of the proceeding was challenged by Orleans County and other residents and interested parties, SSW tabled the eminent domain resolution on August 3, 2023. A copy of SSW's Board Meeting minutes from August 3, 2023 is attached as Exhibit R.

79. Consequently, there is no published determination and findings or public record of the Hearing.

80. Despite tabling the eminent domain proceedings and failing to obtain the necessary easements, Respondents have proceeded with construction of the force main northerly toward Orleans County since August 3, 2023 and have no plans to alter the course of the force main.

81. Respondents are planning to imminently commence construction of the force main in Orleans County.

**AS AND FOR A FIRST CAUSE OF ACTION:**  
**ULTRA VIRES, ARBITRARY AND CAPRICIOUS ACTION**  
**IN VIOLATION OF THE GENERAL MUNICIPAL LAW**

82. Petitioner repeats and realleges the allegations contained in paragraphs 1-81 above and incorporate such allegations by reference as if set forth herein.

83. Respondent GCEDC violated § 854(4) the General Municipal Law, *inter alia*, by approving Resolution 6.3 which financed the purchase of easements in Orleans County at its June 29, 2023 Board Meeting.

84. Adopting the Resolution authorizing the purchase of the easements not only violated applicable substantive and procedural laws, but it was arbitrary and capricious and in excess of its authority.

85. Thus, GCEDC's Resolution must be declared null and void.

**AS AND FOR A SECOND CAUSE OF ACTION:**  
**ULTRA VIRES, ARBITRARY AND CAPRICIOUS ACTION**  
**IN VIOLATION OF THE GENERAL MUNICIPAL LAW**

86. Petitioner repeats and realleges the allegations contained in paragraphs 1- 85 above and incorporate such allegations by reference as if set forth herein.

87. Respondent GCEDC violated § 854(4) of the General Municipal Law by using its funds to purchase easements PE-3 and TE-5, which relate to land in Orleans County, on June 30, 2023.

88. The purchase of the easements not only violated applicable substantive and procedural laws, but it was arbitrary and capricious and in excess of its authority.

89. Thus the purchase of the easements must be annulled.



**AS AND FOR A THIRD CAUSE OF ACTION:**  
**ULTRA VIRES, ARBITRARY AND CAPRICIOUS ACTION**  
**IN VIOLATION OF THE GENERAL MUNICIPAL LAW**

90. Petitioner repeats and realleges the allegations contained in paragraphs 1- 89 above and incorporate by reference as if set forth herein.

91. Respondents violated § 854(4) of the General Municipal Law and §121 of the Transportation Corporations Law by noticing the Eminent Domain Public Hearing and conducting it on July 27, 2023.

92. Respondent GCEDC improperly funded Respondent SSW's noticing and holding of the Eminent Domain Public Hearing.

93. Respondents conspired to and did violate the procedural and substantive provisions of law, acted arbitrarily and capriciously and in excess of their authority. As such GCEDC, GGLDC and SSW should be permanently enjoined from supporting, financing, and/or contracting for any construction of the force main or any other project in Orleans County without its consent and they should be permanently enjoined from attempting to commence eminent domain proceedings relative to this Project.

**AS AND FOR A FOURTH CAUSE OF ACTION:**  
**RESPONDENTS CONSPIRED TO COMMIT FRAUD**

94. Petitioner repeats and realleges the allegations contained in paragraphs 1- 93 above and incorporate by reference as if set forth herein.

95. To circumvent the prohibition against GCEDC commencing eminent domain proceedings in Orleans County, it conspired with SSW to commence such proceedings solely so that SSW could do what GCEDC was prohibited from doing.

96. The publication of the Notice of Public hearing and the conduct of the public hearing were clearly intended to induce the public, including Petitioner, to rely upon the

representation that SSW was a valid Transportation Corporation and that it had the authority and the need to undertake the Eminent Domain proceeding when in reality, SSW was simply GCEDC's stalking horse.

97. Although the eminent domain proceeding was tabled by SSW, the construction has not stopped.

98. This alone demonstrates the intent to defraud. GCEDC directed and paid for SSW to cause a public notice to be published stating that the easements were required for SSW to continue its "Project", but despite not having the easements, the "Project" moves forward.

99. It is clear that the Respondents have conspired to violate the law and defraud the general public in furtherance of their scheme to get the force main constructed at any cost.

**AS AND FOR A FIFTH CAUSE OF ACTION:**  
**PETITIONER IS ENTITLED TO INJUNCTIVE RELIEF**

100. Petitioner repeats and realleges the allegations contained in paragraphs 1-99 above and incorporate by reference as if set forth herein.

101. Petitioner is entitled to an injunction prohibiting any further construction of the force main in Orleans County pending resolution of this action. Respondents are threatening to or are about to commence construction of a sewer line on Orleans County land without the consent of and over the objection of Orleans County.

102. If injunctive relief is not granted, Petitioners will complete construction of the force main in Orleans County which would render any finding by this Court in favor of Petitioner ineffectual and which will unquestionably result in injury to the Petitioner during the pendency of this application.

103. Petitioner has established its entitlement to injunctive relief pursuant to CPLR Article 63.

**AS AND FOR A SIXTH CAUSE OF ACTION:**  
**PETITIONER IS ENTITLED TO DECLARATORY JUDGMENT**

104. Petitioner repeats and realleges the allegations contained in paragraphs 1- 102 above and incorporate by reference as if set forth herein.

105. Pursuant to CPLR 3001 Petitioner is seeking a Declaratory Judgment relative to the rights and obligations of the parties to this action.

106. While the allegations of arbitrary and capricious actions and *ultra vires* actions are amenable to determination in the context of the Article 78 proceeding, there are certain rights, responsibilities and obligations at issue in this case which, for various reasons, are matters of first impression or would remain unresolved even after resolution of the Article 78 issue and thus a Declaratory Judgment is appropriate.

107. Accordingly, Petitioner seeks Declaratory Judgment as follows:

- a. that as an IDA, GCEDC is prohibited from financing projects in Orleans County without its consent.
- b. that the STAMP Development is a “Project” as defined by GML 854(4).
- c. that GCEDC has financed the STAMP Project in Orleans County without its consent.
- d. that GCEDC is the party with whom the design, engineering and construction contract(s) for the construction of the force main were made and is the party who is, and has been, making payments on those contracts.

e. that GCEDC lacks the authority to construct the force main on lands in Orleans County without its consent.

f. that SSW is not a proper Sewage Works Corporation under the Transportation Corporations Law.

g. that construction of the force main into Orleans County by the Respondents, their agents or assigns without the consent of Orleans County is improper and thus permanently enjoining the same.

**WHEREFORE**, Petitioner respectfully requests that this Court issue an Order:

GRANTING Judgment in favor of the Petitioner on its FIRST, SECOND, THIRD and FOURTH Causes of Action determining that the Respondents conspired to and in fact, did violate the law, that their actions were arbitrary and capricious and in excess of their authority and declaring their actions null and void.

GRANTING Petitioner's FIFTH Cause of action for an injunction prohibiting Respondents their agents or assigns from undertaking any further construction of the force main or any other construction in Orleans County without its express consent.

DECLARING Judgment in favor of the Petitioner as is set forth in the SIXTH Cause of Action.

AND for such other and further relief this Court deems appropriate.

DATED: September 11, 2023  
Buffalo, New York

**LIPPES MATHIAS LLP**

/s/Jennifer C. Persico  
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**VERIFICATION**

STATE OF NEW YORK            )  
COUNTY OF ORLEANS        )    SS.:  
TOWN OF ALBION             )

**LYNNE JOHNSON**, being duly sworn, deposes and says:

I am Chairman of the Orleans County Legislature. As such, I have read the foregoing **PETITION** and know the contents thereof; and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

  
\_\_\_\_\_  
**LYNNE JOHNSON**

Sworn to before me this  
8<sup>th</sup> day of September, 2023.

  
\_\_\_\_\_  
Notary Public

LISA D. STENSHORN  
Notary Public, State of New York  
No. 01ST6042776  
Qualified in Orleans County  
Commission Expires June 5, 2026