



On the following pages, you will find the Plaintiffs-Appellants' Jurisdictional Statement received by the New York State Court of Appeals on November 28, 2003, in the New York LLC Publication case of Barklee v. Pataki.

Please note that we have not included Exhibits A, B and C referred to in this document because those documents are posted separately to our web site. To download these, or any of the documents related to this case, visit the Resources page of our web site:  
<http://www.nationalcorp.com/resource.htm>.

New York County Index No. 120546/99

COURT OF APPEALS  
STATE OF NEW YORK

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BARKLEE REALTY COMPANY LLC and  
BARKLEE 94 LLC,

Plaintiffs-Appellants,

- against -

GEORGE E. PATAKI, as Governor of  
the State of New York,

Defendant-Respondent.

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PLAINTIFFS-APPELLANTS' JURISDICTIONAL STATEMENT  
UNDER RULE 500.2

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Of Counsel

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Respondent

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NEW YORK STATE  
COURT OF APPEALS

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EXHIBIT B: Decision and Order of the Appellate Division, First Department, entered October 16, 2003	
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EXHIBIT D: Notification dated November 20, 2003 to the Solicitor General of the State of New York under Rule 500.2(d)	

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PLAINTIFFS-  
: APPELLANTS'  
JURISDICTIONAL  
: STATEMENT UNDER  
RULE 500.2  
: New York County  
: Index No. 120546/99  
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PRELIMINARY STATEMENT

1. The title of the proceeding is as set forth above.
2. Plaintiffs appeal to the Court of Appeals from a decision and order of the Appellate Division, First Department, entered October 16, 2003 unanimously reversing a decision and judgment (denominated an order) of the Supreme Court, New York County (Alice Schlesinger, J.) entered November 28, 2001, which granted summary judgment to Plaintiffs on the Complaint and denied summary judgment to Defendant.
3. Plaintiff's Notice of Appeal was filed in the office of the Clerk of New York County on November 17, 2003, and a copy thereof was served by hand on November 17, 2003 on Defendant's attorney, The Honorable Eliot Spitzer, Attorney General of the State of New York, at the address set forth in Par. 5 below.

4. On November 17, 2003 Plaintiff served on Defendant's attorney by hand the Appellate Division Order appealed from herein, with Notice of Entry, at the address set forth in Par. 5 below.

5. The attorney for Defendant is as follows:

The Honorable Eliot Spitzer  
Attorney General of the State of New York  
120 Broadway, 25<sup>th</sup> floor  
New York, New York 10271-0332  
Telephone: (212) 416-8000

6. Attached hereto and made a part hereof are copies of (i) Notice of Appeal to this Court dated November 17, 2003 (Exhibit A), (ii) appealed from decision and order of Appellate Division, First Department, entered October 16, 2003 (Exhibit B), (iii) decision and order of the Supreme Court, New York County, entered November 28, 2001 (Exhibit C), and (iv) notification dated November 20, 2003 to the Solicitor General of the State of New York under Rule 500.2(d) (Exhibit D). Except as set forth above, there were no opinions or formal or informal findings or conclusions issued with respect to the aforesaid judicial determinations.

#### BASIS OF COURT OF APPEALS JURISDICTION

7. Plaintiffs are single-member New York limited liability companies duly authorized to do business in New York State under the New York Limited Liability Company Law (LLC Law).

8. Nonetheless, LLC Law §206 prohibits Plaintiffs from bringing legal proceedings in New York courts unless and until they comply with publication and filing requirements which are costly and time-consuming.

9. Plaintiffs brought this proceeding for a declaratory judgment under CPLR §3001 and 42 U.S.C. 1983, claiming that the publication and filing requirements of LLC Law §206 and the resulting denial of access to New York State courts for non-compliance violate Plaintiffs' rights to due process of law and equal protection of the laws under the Fifth and Fourteenth Amendments to the U.S. Constitution and under Article 1 §§6 and 11 of the New York State Constitution (R. 19-42').

10. With the Supreme Court's approval, Plaintiffs amended the Complaint to add a claim that the publication and filing requirements and denial of Court access for non-compliance under LLC Law §206 also violate Plaintiffs' right to equal access to State courts with individuals and corporations under Article 10 §4 of the New York Constitution (R. 89-115).

11. After preliminary proceedings, Plaintiffs moved for summary judgment, and Defendant cross-moved for summary judgment, with each party opposing the other's and replying to the opposition to its own motion.

12. The Supreme Court, New York County, (Alice Schlesinger, J.) granted Plaintiffs' motion for summary judgment and denied Defendant's cross-motion upon a determination that LLC

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\* Numbers following R. refer to pages in the Record On Appeal. Numbers following SR. refer to pages in the Supplemental Record On Appeal. Numbers following Pl.Br. refer to pages in Brief of Plaintiffs-Respondents dated November 29, 2002 filed in the Appellate Division appeal.

Law §206 violates Plaintiffs' constitutional rights to due process of law, equal protection of the laws, and equal access to New York courts with individuals and corporations (Exhibit C hereto).

13. Defendant appealed said decision and order to the Appellate Division, First Department, which unanimously reversed all of the determinations of the Supreme Court and found LLC Law §206 constitutional (Exhibit B hereto).

14. The basis of Court of Appeals jurisdiction is an appeal as of right on constitutional grounds under CPLR Section 5601(b)1. The Appellate Division order finally determines the proceeding and directly involves the construction of (i) the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1 §6 of the New York State Constitution, (ii) the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article 1 §11 of the New York State Constitution, and (iii) the equal court access provisions of Article 10 §4 of the New York State Constitution.

ISSUES RAISED AND TO BE RAISED ON APPEAL

In support of reversal by the Court of Appeals, Plaintiff has urged and will urge the following points of law:

POINT I.

MAKING COURT ACCESS FOR LLCs CONDITIONAL ON COMPLIANCE WITH THE PUBLICATION AND FILING REQUIREMENTS OF LIMITED LIABILITY LAW §206 VIOLATES PLAINTIFFS' CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW (R. 96-99, 227-241, 398-400, 471-474, 499-501; Pl.Br. 7-20).

- A. The Required Publications And Filings Are Unduly Burdensome And Serve No Useful Public Purpose (R. 97-98, 231-233, 239-240, 398-400, 472-474, 499-501; SR. 6-17; Pl.Br. 5-9, 12-15, 17-20).
- B. The Preconditions To Court Access Are Inconsistent With The Broad Powers Granted To LLCs Under The LLC Law (R. 96-99, 398-400, 499-501; Pl.Br. 7-9).
- C. The Preconditions To Court Access Are Arbitrary And Not Reasonably Related To Court Proceedings (R. 472-474, 500-501; Pl.Br. 10-15).
- D. The Denial Of Court Access For Failure To Comply With The Preconditions Is An Excessive And Unjustified Penalty (R. 98-99, 230-240, 471-474, 499-501; Pl.Br. 9-15).
- E. The Preconditions To Court Access Are Fundamentally Unfair (R. 98-99, 237-240, 398-400, 471-474, 500-501; Pl.Br. 17-20).

POINT II.

MAKING COURT ACCESS CONDITIONAL ON COMPLIANCE WITH LLC LAW §206 DENIES PLAINTIFFS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS (R. 96-100, 227-241, 400-401, 475-479, 501-503; Pl.Br. 20-28).

- A. The Right To Bring Court Proceedings Is Fundamental To The Conduct Of Plaintiffs' Business (R. 98, 234-237, 476-477; Pl.Br. 20-21).
- B. There Is No Rational Basis For Imposing Conditions To Court Access On LLCs Which Do Not Apply To Other Litigants (R. 98-99, 237-240, 400-401, 475-479, 501-503; Pl.Br. 21-28).
- C. Rationales For Imposing Conditions To Court Access On Partnerships And Unregistered Entities Do Not Apply To LLCs (R. 475-476, 500-502; Pl.Br. 21-27).

POINT III.

MAKING COURT ACCESS CONDITIONAL ON COMPLIANCE WITH THE PUBLICATION AND FILING REQUIREMENTS OF LLC LAW §206 VIOLATES THE EQUAL COURT ACCESS PROVISIONS OF ARTICLE 10 §4 OF THE NEW YORK STATE CONSTITUTION (R. 96-100, 227-241, 401-402, 479-480, 503; Pl.Br. 28-29).

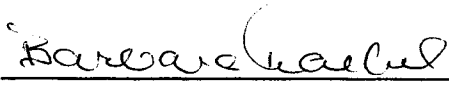
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- A. Neither Natural Persons Nor Corporations Are Subject To Comparable Preconditions To Court Access (R. 99. 237-239, 401-402, 480; Pl.Br. 28-29).
- B. The Preconditions Arbitrarily Alter And Restrict The Right To Court Access (R. 98-100, 231-241, 401-402, 471-480; Pl.Br. 10-29).

CONCLUSION

Based on the foregoing, Plaintiffs-Appellants respectfully request this Court to accept jurisdiction of this appeal.

Dated: November 25, 2003  
New York, New York

  
Barbara Kraebel  
Plaintiffs-Appellants pro se  
60 East 42nd Street - #1166  
New York, New York 10165  
Telephone: (212) 831-1012

TO: Clerk of the Court (2 copies)  
New York State Court of Appeals  
Court of Appeals Hall  
20 Eagle Street  
Albany, New York 12207

The Honorable Eliot Spitzer  
Attorney General of the State of New York  
120 Broadway - 25th floor  
New York, New York 10271-0332  
Attention: Melanie L. Oxhorn  
Assistant Solicitor General  
Of Counsel

Solicitor General of the State of New York  
Department of Law  
The Capitol  
Albany, New York 12224

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November 20, 2003

Solicitor General of the  
State of New York  
Department of Law  
The Capitol  
Albany, New York 12224


RE: Barklee Realty Company LLC et al.  
v. George E. Pataki, as Governor  
NY County Supreme Ct. Index # 120546/99

Dear Solicitor General:

This is to advise, in accordance with Court of Appeals Rule 500.2(d), that Barklee Realty Company LLC and Barklee 94 LLC, Plaintiffs in the above proceeding now on appeal to the Court of Appeals, assert that Section 206 of the New York Limited Liability Company Law is unconstitutional under the due process and equal protection clauses of Article 1 §§6 and 11 of the New York State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution and also under the court access provisions of Article 10 §4 of the New York State Constitution.

Enclosed herewith is a copy of Plaintiffs-Appellants Jurisdictional Statement to be filed in furtherance of said appeal.

Sincerely yours,



Barbara Kraebel  
Plaintiffs-Appellants pro se

bk:s  
enclosure

Certified Mail #7002 2410 0005 4095 5284 RRR

AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
                                  :     ss.:  
COUNTY OF NEW YORK    )

Barbara Kraebel, being duly sworn, says:

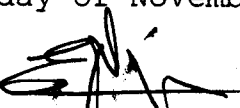
1. I am an attorney admitted to practice in New York State, am over 18 years of age, and am the member-manager of Barklee Realty Company LLC, a New York limited liability company, and of Barklee 94 LLC, a New York limited liability company, Plaintiffs pro se in the above proceeding, having an office at 60 East 42nd Street, #1166, New York, New York 10165.

2. On November 25, 2003 I served the notification dated November 20, 2003 under Rule 500.2(d) and a copy of the attached Plaintiffs-Appellants' Jurisdictional Statement by mail upon the following person at the following address:

Solicitor General of the State of New York  
Department of Law  
The Capitol  
Albany, New York 12224  
(Certified Mail #7002-2410-0005-4095-5284 RRR)

  
\_\_\_\_\_  
Barbara Kraebel

Sworn be before me this  
26<sup>th</sup> day of November, 2003.

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

ERNESTO NEGRON  
Notary Public, State of New York  
No. 01NE6067764  
Qualified in new York County  
Commission Expires December 17, 2005