

CITY OF SYRACUSE, Syracuse Urban
Renewal Agency, Defendants–Third–
Party–Defendants–Appellants,

v.

ONONDAGA COUNTY and Onondaga
County Department of Drainage and
Sanitation, Defendants–Third–Party–
Plaintiffs–Appellees,

Atlantic States Legal Foundation, Inc.,
State of New York and Thomas C.
Jorling, Commissioner of the New
York State Department of Environ-
mental Conservation, Plaintiffs,

2.3 Acres of Land in the City of
Syracuse, NY, Defendant–
Third–Party–Defendant.

Docket No. 04–0718–cv.

United States Court of Appeals,
Second Circuit.

Argued: Sept. 14, 2004.

Decided: Sept. 21, 2006.

Background: In suit against county to force clean up of lake, county sought to join city and its renewal agency and to condemn city land for construction of waste water treatment plant. The United States District Court for the Northern District of New York, McAvoy, J., allowed county to condemn city property to construct sewage treatment facility and ordered the properties condemned. City and agency appealed.

Holdings: The Court of Appeals, Hall, Circuit Judge, held that:

- (1) joinder of city to preexisting action was proper; and
- (2) certification to the New York Court of Appeals was warranted on questions of authority to condemn city and application of prior public use doctrine.

Affirmed in part, and questions certified.

1. Federal Courts ⇌817

The Court of Appeals reviews for abuse of discretion a district court's decision to join party. Fed.Rules Civ.Proc. Rules 19, 21.

2. Federal Courts ⇌817

Joinder under the All Writs Act is reviewed for abuse of discretion. 28 U.S.C.A. § 1651.

3. Federal Courts ⇌712, 915

Issues not sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal.

4. Federal Courts ⇌915

Appellant waived argument by making it only in a heading and footnote in brief.

5. Federal Civil Procedure ⇌219

Joinder of city and its urban renewal agency as third-party defendants in suit against county to force it to clean up lake was necessary to accord complete relief to county on its claim for condemnation of city land in order to build sewage treatment facility and comply with court order; even though the state Department of Environmental Conservation (DEC) could have exercised power of eminent domain and conveyed property to county, it refused to do so. Fed.Rules Civ.Proc.Rule 19(a)(1), 28 U.S.C.A.

6. Federal Civil Procedure ⇌924

City's challenge to county's joinder motion was not an appropriate vehicle by which city could revisit county's decision many years previously to reject alternative sites for residential treatment facility and build it on city land; the argument was irrelevant to whether joinder was proper to accord complete relief. Fed.Rules Civ. Proc.Rule 19(a)(1), 28 U.S.C.A.

2001). The City argues that not only was the District Court precluded from joining it as a party to the litigation, but also that the court erred in its interpretation of the state and county statutes at issue.

We affirm the District Court's joinder decision but, because of ambiguities in the statutory construction of New York State and Onondaga County law regarding which County entity or entities may condemn City land and the process they must follow, we certify questions relating to that issue to the New York Court of Appeals. We retain jurisdiction so that, upon receiving a response from the New York Court of Appeals, we may rule on this appeal.

BACKGROUND

In 1988, ASLF, a not-for-profit membership organization dedicated to protecting and restoring natural resources and preserving the environment, brought a citizen lawsuit under § 505 of the Federal Water Pollution Control Act, 33 U.S.C. § 1365, against Onondaga County and the Onondaga County Department of Drainage and Sanitation ("County"). The ASLF alleged that the County had violated the Water Pollution Control Act and the New York State Environmental Conservation Law by discharging untreated raw sewage into Onondaga Lake from the County-owned and operated Metropolitan Syracuse Sewage Treatment Plant. The ASLF contended that, as a consequence of the discharges, Onondaga Lake did not meet the water quality standards authorized by the New York State Department of Environmental Conservation ("DEC"). New York State and the DEC later intervened as Plaintiffs in the lawsuit.

1. The Director of the Onondaga Lake Improvement Project Office described the system as consisting of "dedicated sanitary sewer laterals and collectors, storm water collecting sewers, combined sewers and

A. *The Syracuse–Onondaga County Sewer System*

Syracuse, the largest city in Onondaga County, is located at the southern end of Onondaga Lake. In 1907, Syracuse began constructing an extensive sewer system¹ which, among other attributes, combined the collection of storm water and sewage in the same pipes. According to an Environmental Protection Agency Report, during heavy rainstorms or snow melts, the "already overloaded collection and treatment system is subjected to added stress" because the volume of water flowing through the system exceeds its hydraulic capacity. EPA Review of No Significant Impact and Environmental Assessment (July 16, 1999). In order to avoid sewage backup in basements during those periods of wet weather—which occur approximately fifty to sixty times per year—numerous Combined Sewer Overflow ("CSO") points located throughout the system would discharge raw sewage and storm water runoff into three Onondaga Lake tributaries. The sewage discharges impaired the water quality to such an extent that Onondaga Lake and its tributaries exhibited high bacteria levels. In addition, the EPA Report indicated that "the residents of the project area [were] subjected to the odors arising from the decomposition of the organic matter trapped in the CSOs and contained in discharges from the CSOs along Onondaga Creek during a storm event." *Id.*

Since at least the late 1970s, the County has made efforts to resolve the sewage discharge problem. A 1979 CSO control and abatement study examined several al-

catchbasins that collect sanitary wastewater and/or storm water. . . . This combined flow is conveyed to trunk and interceptor sewers within the City, owned, operated and maintained" by the County.