

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RIVERSIDE SOUTH PLANNING CORPORATION, :
:
Plaintiff, :
: Index No.
- against - :
: **COMPLAINT**
CRP/EXTELL RIVERSIDE, L.P., and :
CRP/EXTELL PARCEL I, L.P., :
:
Defendants.:
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Plaintiff Riverside South Planning Corporation (“RSPC”), by its counsel, Cravath, Swaine & Moore LLP, for its complaint herein, alleges upon knowledge as to itself and information and belief as to all other matters:

NATURE OF ACTION

1. RSPC brings this action for equitable relief against CRP/Extell Riverside, L.P., and CRP/Extell Parcel I, L.P. (collectively, “Extell”) based upon Extell’s ongoing violation of its contractual obligations under the letter agreement between Donald J. Trump and six members of RSPC dated March 31, 1993 (the “1993 Agreement”) (attached hereto as Ex. 1), to which Extell is bound. That agreement specifically gave RSPC the power to enforce the agreement’s promises. RSPC now seeks to enjoin further construction of the building at 80 Riverside Boulevard in New York County, New York (“Building I”) to the extent the construction violates the Riverside South Design Guidelines dated May 21, 1993 (the “Design

Guidelines” or “Guidelines”) (attached hereto as Ex. 2) and to compel Extell to comply with those Guidelines.

THE PARTIES

2. Plaintiff RSPC is a New York not-for-profit corporation dedicated to the planning, design and construction of the seventy-six acre parcel of land running north to south from 72nd Street to 59th Street and east to west from 11th Avenue to the Hudson River in the City of New York, Borough of Manhattan, commonly known as the former Penn Central Railroad Yards or Riverside South (“Riverside South”). RSPC’s principal place of business is in New York City.

3. Defendants CRP/Extell Riverside, L.P., and CRP/Extell Parcel I, L.P., are Delaware limited partnerships engaged in real estate development. Their principal places of business are in New York City.

STATEMENT OF FACTS

Overview

4. In 1993, to secure community and government approval for his plan to develop seventy-six acres of residential and commercial real estate on New York’s Upper West Side, Donald J. Trump committed himself and future developers of Riverside South to certain environmental and design principles by agreeing to abide by the Design Guidelines, a set of development guidelines for the buildings, parks, streets and open spaces of Riverside South.

5. The May 21, 1993, Design Guidelines, incorporated into the 1993 Agreement, detailed the environmental sustainability, design and other standards for Riverside South’s development and the procedures and methods required to implement them. See Ex. 2 at §§ 1.0-1.2.

6. In the 1993 Agreement, Trump, as developer, committed to (a) develop Riverside South in compliance with the Design Guidelines; (b) invest RSPC with the authority to ensure the developer's compliance on behalf of the public; and (c) bind any developers of Riverside South who succeeded Trump to do the same. See Ex. 1 at 1-4.

7. Hudson Waterfront Associates, L.P. ("HWA") purchased Riverside South in 1994 and continued to comply with the Guidelines.

8. When Extell purchased Riverside South from HWA in 2005, it agreed to assume the developer's obligations under the 1993 Agreement. See Assignment and Assumption of RSPC Letter Agreement dated November 3, 2005 (the "2005 Assignment & Assumption Agreement") (attached hereto as Ex. 3) at 1-2. However, Extell has commenced construction of a building--Building I--which fails to comply with certain design criteria of the Guidelines. Extell has also failed either to seek or to secure approval of RSPC for the non-compliant construction. Finally, Extell has refused to supply RSPC with information sufficient to assess fully the building's compliance and to conduct its enforcement function, as provided for in the 1993 Agreement. Those failures constitute breaches of Extell's obligations under that agreement and of its implied covenant of good faith and fair dealing.

History of the Design Guidelines and RSPC

9. The developer's agreement to conform the Riverside South buildings with the Design Guidelines and to enable RSPC to monitor compliance with the goal of environmentally-sustainable development and design quality was essential in making development of Riverside South possible.

10. After Penn Yards Associates ("Penn Yards"), a partnership controlled by Trump, purchased the Penn Central Railroad Yards in 1984, it proposed two successive plans--

the first dubbed “Television City” and the second “Trump City”--for developing the site into residential and commercial real estate.

11. Community groups opposed the environmental impact and design of Trump’s plans. In 1990, six civic groups leading the opposition--the Regional Plan Association, the Municipal Art Society of New York, Inc., the Natural Resources Defense Council, the Parks Council, People for Westpride, Inc., and the Riverside Park Fund--joined forces to support a new conceptual plan, the “Civic Alternative”.

12. After extensive negotiations, on March 5, 1991, the civic groups, the City of New York, the State of New York and Trump reached agreement on the principal elements of a plan based on the Civic Alternative. These elements formed the basis for the design of the Riverside South Development Plan.

13. The civic groups agreed to withhold their opposition and to support development on the basis of their agreement with the Development Plan and they created and joined RSPC in order to do so. Trump agreed to withdraw his Trump City plans from consideration by city authorities. The new Development Plan focused upon environmental sustainability and design criteria for the buildings and called for parks, open spaces and public art programs.

14. Representatives from each of the six civic groups and Trump entered into a Memorandum of Understanding dated April 17, 1991, in which they agreed to form RSPC. (Attached hereto as Ex. 4.) The new entity’s purpose would be “to complete the design and to expedite the development of a sound plan for the site, and to develop and foster consensus among all interested parties in anticipation of a public review process”. (Ex. 4 at 1.) Under the terms of the April 17 Memorandum, all parties were obligated to use their best efforts to promote

the Development Plan accepted by the RSPC Board and to bind any successors to the agreement. In order for RSPC to conduct its role and protect the public interest, Trump was required to afford RSPC full access to technical information (e.g., engineering and traffic analyses) concerning Riverside South. See id. at 1, 3.

15. RSPC was incorporated on May 1, 1991. The initial directors, who together constituted the corporation's membership, were representatives from the six civic groups, the future President of RSPC, Richard A. Kahan, and Trump.

16. The Development Plan and RSPC's role within it were instrumental in securing approval for development of Riverside South. The civic groups agreed to drop their opposition and support development on the basis of their agreement with the Development Plan, and they created and joined RSPC in order to do so.

17. Government officials also gave their support because of the Development Plan. In August 1992, the President of the Borough of Manhattan agreed to support the plan for Riverside South in front of the City Planning Commission and the City Council based upon RSPC's agreement with the developer to, inter alia, pursue a program of sustainable development, place certain limits on building design, construct the park and guarantee that the developer's commitments would be binding on its successors and assigns. See Memorandum of Understanding among Ruth W. Messinger, President, Borough of Manhattan, Donald J. Trump, President, Penn Yards Assocs. and Richard A. Kahan, Chairman, Riverside South Planning Corp. (Aug. 26, 1992). (Attached hereto as Ex. 5.) Trump made promises to city officials that he, as developer, would abide by the Development Plan. For instance, in October 1992, Trump assured the City Commissioner of Telecommunications and Energy, William F. Squadron, that Penn Yards was committed to a program of sustainable development, the progress of which it

would report to city agencies. See Letter from Donald J. Trump, President, Penn Yards Assocs., to William F. Squadron, Comm’r of Telecommunications and Energy, City of New York (Oct. 23, 1992). (Attached hereto as Ex. 6.)

18. The City of New York approved the plans submitted by the developer on December 17, 1992. That same day, Penn Yards made its restrictive declaration. See Restrictive Decl. of Penn Yards Assocs., New York County Block 1171, Lot 1, dated Dec. 17, 1992. (Attached hereto as Ex. 7.)

1993 Agreement

19. The civic groups agreed to support the implementation of the approved Development Plan on the terms described in the 1993 Agreement.

20. That agreement made clear that RSPC would have an active role in planning and designing Riverside South and in ensuring that its development lived up to the environmental sustainability and design principles of the Development Plan. On behalf of Penn Yards, Trump wrote that he “look[ed] forward to continuing our joint effort through [RSPC] to expedite and ensure development of the site in accordance with the approved plan”. (Ex. 1 at 1.)

21. In the 1993 Agreement, Trump agreed, inter alia, to abide by the Design Guidelines:

“I agree to develop the project in substantial conformity to design guidelines which will be administered in accordance with the attached procedures, and not to apply for any major modifications or rezonings . . . without approval of a majority of the members of RSPC (which approval will not be unreasonably withheld or delayed).”

(Ex. 1 at 1-2.)

Certain of Trump’s obligations--e.g., to abide by the Design Guidelines and to work with RSPC on park development and maintenance--were capped by a “sunset provision”: they would expire

after ten years, or the lesser of the period in which the permits were in effect or Trump owned any portion of the property. (Ex. 1 at 3.)

22. After this “sunset provision”, the 1993 Agreement went on to define an additional commitment by Trump:

“I agree that I will require any person who purchases any Parcel of the Subject Property from me so long as the Special Permits remain in effect, to agree to abide by the agreements in this letter insofar as they relate to the development of the project and the park, delegation of park maintenance, and the restrictions on seeking changes in the approved plan. In particular, I will contractually require the purchaser(s) to agree to develop such parcel in accordance with these guidelines and not to apply for any changes or modifications in the approved plan not permitted hereunder so long as the Special Permits remain in effect without approval of a majority of the members of RSPC, which approval is not to be unreasonably withheld or delayed.”

(Ex. 1 at 3.)

23. That additional commitment was fully consistent with the scope of the Riverside South development project, which contemplated construction of sixteen buildings on seventy-six acres, a completely new park and substantial changes to the Miller Highway--all of which could not possibly have been completed within ten years. Indeed, one of the principal purposes of the Design Guidelines was--and continues to be--to assure that development occurred as a consistent and unified whole. That is precisely why the 1993 Agreement was carefully drafted so that the “sunset provision” would not apply to Trump’s obligation to require his successor(s) to bind themselves contractually to the Design Guidelines.

24. Moreover, the Design Guidelines that govern development of Riverside South were agreed to and implemented in 1993, well before the “sunset” date of March 31, 2003. Whatever the impact of the “sunset provision”, it cannot vitiate, ex post facto, design decisions

and agreements that had been reached before the “sunset” date--including the commitment to develop the entire Riverside South project in compliance with the Design Guidelines. Any other result would undermine the parties’ original goal of having a consistent and unified design for Riverside South as a whole.

25. The 1993 Agreement invested RSPC with power to enforce the agreement’s promises: “[i]t is my intent that RSPC . . . should have the right to enforce these promises solely by an action for damages or injunctive relief”. (Ex. 1 at 3.)

1994 Agreement

26. In 1994, Penn Yards sold title to Riverside South to HWA, an entity in which Trump had an interest but not control.

27. Pursuant to the 1993 Agreement, HWA was bound to abide by the Design Guidelines and work with RSPC. By letter to RSPC dated June 29, 1994 (the “1994 Agreement”) (attached hereto as Ex. 8), HWA agreed to abide by the 1993 Agreement.

“As you know we are purchasing title to property commonly known as Riverside South or Penn Yards. Mr. Donald J. Trump will be a partner in this endeavor. We are aware of the important role you and the other Members of the Riverside South Planning Corporation (‘RSPC’) have played in the design and approval process for the project to be known as Riverside South. It is our desire that RSPC continue to maintain its role in the development of Riverside South, and the defense of litigation intended to impede that development, and we accept the terms (and receive the benefits) of the letter dated March 31, 1993, subject to your confirmation of the following interpretation of that letter.”

(Id. at 1.)

28. HWA consulted with RSPC on sustainability and design matters over the approximately eleven-year course of its ownership of Riverside South. From the date the 1994 Agreement was signed until the date HWA sold the property, RSPC evaluated the sustainability

efforts of buildings and approved design conformity with and modifications to the Guidelines. At present, six of the nine constructed buildings are in full compliance with the design requirements, and three with the sustainable development requirements. HWA also continued to fund RSPC, in compliance with the 1993 Agreement.

2005 Assignment & Assumption Agreement

29. Extell purchased its interest in Riverside South on June 17, 2005, and, like HWA, assumed the obligations of the 1993 Agreement. The 2005 Assignment & Assumption Agreement transferred HWA's rights and duties under the 1993 Agreement to Extell.

“Assignor hereby assigns, transfers, sets-over, delivers and conveys unto Assignees all of the rights, benefits and privileges of Assignor, under that certain letter agreement dated March 31, 1993 between Penn Yards Associates and Members of the Riverside South Planning Corporation (the “RSPC Letter Agreement”) . . .

Assignees assumes [sic] all of the duties, obligations and liabilities of Assignor under the RSPC Letter Agreement . . .”

(Ex. 3 at 1-2.)

30. The 2005 Assignment & Assumption Agreement reflects Trump's understanding that his undertaking to make his successors contractually bound by the Design Guidelines did not “sunset” in ten years. Through the 2005 Assignment & Assumption Agreement, he did, in fact, fulfill that very commitment--and did so a full twelve years after the 1993 Agreement.

31. That Extell understands that it contractually agreed to abide by the Design Guidelines--and that the ten-year “sunset provision” does not apply to that contractual undertaking--is demonstrated by its conduct as well. Through 2005 and into 2006, Extell acted consistently with that very obligation. It funded RSPC, its architects corresponded with the

organization and Donna Gargano, an employee of Extell, promised to provide RSPC with plans for a new building, Building I.

32. Nonetheless, when construction was about to commence on Building I, Extell switched course and refused to satisfy its obligations under the 1993 Agreement. First, in December 2005, Extell indicated to RSPC that it planned to construct the building with more glass than the Design Guidelines permitted. See Ex. 2 at § 3.7.2. Second, Extell neither sought nor secured the approval of RSPC’s Board for this non-compliant construction. Third, Extell has not conducted the “payback calculation” of energy efficiency required by Section 5.1.1 and detailed in Exhibit 5.1 of the Guidelines, or compared the Building’s “Initial Design” with an improved one incorporating “all feasible energy saving elements”. See Ex. 2 at § 5.1.1; Exhibit 5.1.

33. In violation of its implied covenant of good faith and fair dealing under the 1993 Agreement, Extell prevented RSPC from conducting its enforcement role by refusing to share plans and specifications necessary for RSPC to determine whether Building I otherwise complied with the Design Guidelines.

34. From December 2005 through June 2007, in phone messages, letters and meetings, RSPC repeatedly sought in good faith to engage Extell on these issues, but Extell rebuffed all RSPC attempts.

35. Extell’s breaches of the 1993 Agreement have prevented RSPC’s review of Building I and have interfered with RSPC’s ability to fulfill its fiduciary duty to its members and to the public.

36. Extell has admitted that Building I fails to comply with certain requirements of the Design Guidelines and has refused to provide RSPC with information to

which RSPC is entitled and without which it is impossible for RSPC to conduct a full review of either the building's environmental impact or its compliance with the other requirements of the Design Guidelines.

37. By masking any further non-compliance, Extell seeks to shield itself from any responsibility to develop Riverside South in a manner consistent with the Design Guidelines. It arrogates to itself the final word on both design and environmental impact. Further construction under such circumstances threatens irreparable harm to the Development Plan--the result of carefully arrived-at compromise among the original developer, the City, the State and the community--which permitted development of Riverside South in the first place.

FIRST CAUSE OF ACTION: BREACH OF CONTRACT

38. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 37.

39. The 1993 Agreement was intended to benefit RSPC.

40. Extell breached the 1993 Agreement by, inter alia, constructing Building I in violation of the Design Guidelines and failing to seek or secure approval of the RSPC Board for the non-compliant construction.

41. Extell breached its contractual obligations despite RSPC's compliance with its duties under the 1993 Agreement and the Design Guidelines and despite RSPC's diligent efforts to secure Extell's performance.

42. Extell will continue to act in breach of its contractual obligations by constructing Building I unless enjoined by this Court.

43. Extell's actions have and will continue to cause harm to Plaintiff, the City and the community at large for which there is no adequate remedy at law.

SECOND CAUSE OF ACTION: BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

44. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 43.

45. Under the 1993 Agreement, RSPC's role in development of Riverside South included consultation regarding and oversight and enforcement of the Design Guidelines.

46. Extell is destroying RSPC's ability to fulfill that role by withholding from RSPC plans and specifications reasonably necessary for RSPC to assess Building I's compliance with the Design Guidelines and its environmental sustainability.

47. RSPC's fulfillment of its role is essential to effectuate the purpose of the 1993 Agreement.

48. Extell's provision of plans and specifications reasonably necessary for RSPC to assess Building I's compliance with the Design Guidelines and its environmental sustainability was a reasonable expectation of the parties to the 1993 Agreement.

49. Because of the foregoing, Extell has breached its implied covenant of good faith and fair dealing under the 1993 Agreement.

PRAYER FOR RELIEF

WHEREFORE, RSPC demands judgment:

(A) Enjoining Extell from constructing Building I in a manner which does not comply with the environmental sustainability and design criteria of the Design Guidelines;


(B) Requiring Extell to comply with the Design Guidelines and provide RSPC with plans and specifications reasonably necessary to assess Building I's compliance with the Design Guidelines and its environmental sustainability;

(C) Requiring Extell to comply with the Design Guidelines in all future construction at Riverside South; and

(D) Awarding such further relief as this Court determines is just and proper.

November 29, 2007

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By 

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