

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-007207-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

TPC OVERTOWN BLOCK 45, LLC et al

Plaintiff(s)

vs.

DOWNTOWN RETAIL ASSOCIATES, LLC et al

Defendant(s)

_____ /

**OMNIBUS ORDER ON COUNTER-DEFENDANTS DOWNTOWN RETAIL
ASSOCIATES, LLC'S AND MICHAEL SWERDLOW'S, MOTION FOR SUMMARY
JUDGMENT ON COUNTS I AND II OF PLAINTIFFS' AMENDED COMPLAINT AND
PLAINTIFFS' MOTION TO DISMISS THE DECLARATORY JUDGMENT
COUNTERCLAIMS**

THIS CAUSE having come before the Court on June 11, 2020 on Defendants/Counter-Plaintiffs, Downtown Retail Associates LLC's ("DRA") and Michael Swerdlow's ("Swerdlow") Motion for Summary Judgment on Counts I and II of Plaintiffs' Amended Complaint (the "Motion"), and Plaintiffs/Counter-Defendants, TPC Overtown Block 45, LLC's ("TPC") and WW OGP 45, LLC's ("WW OGP") Motion to Dismiss Counterclaim of Defendants/Counter-Plaintiffs, DRA and Swerdlow (the "Motion to Dismiss"), and the Court having reviewed the Motion and the Motion to Dismiss, and their respective Oppositions and Replies, having reviewed the record, having received the argument of counsel, and being otherwise advised in the premises, the Court hereby makes the following Findings of Fact and Conclusions of Law:

1. The parties agree upon and the Court finds as follows:

(A) the operative contract between the parties (referred to by the parties as the “MIPSA”) was terminated on June 13, 2016;

(B) that eighteen (18) months from termination of the MIPSA was December 13, 2017;

(C) that for purposes of the pending Motion only, Defendants Swerdlow and DRA do not contest the Plaintiffs’ assertion that Swerdlow had discussions and engaged in negotiations with the Southeast Overtown Park West Community Redevelopment Agency (the “CRA”) within 18 months of termination of the MIPSA;

(D) that in October 2017 (within the 18 months from termination of the MIPSA) DRA submitted a bid to the CRA in response to the CRA’s request for proposal regarding the property referred to as Block 55 (the “Bid”);

(E) that DRA entered a formal development agreement with the CRA in October 2018 (the “Development Agreement”);

(F) that for purposes of the pending Motion only, Plaintiffs are not aware whether or not Defendants submitted or signed any transaction contract documents with the CRA regarding Block 55 or the property known as Block 45 within 18 months of the termination of the MIPSA other than the Bid;

(G) that Defendants did not consummate a transaction within the meaning of Section 4.3 of the MIPSA within eighteen (18) months from termination of the MIPSA; and

(H) if there was a breach of Sections 4.1.1, 4.1.2 or 4.1.3 of the MIPSA, Plaintiffs’ remedy is their actual damages capped at \$15 million, apportioned evenly at \$7.5 million dollars for a breach regarding Block 45 and at \$7.5 million dollars for a breach regarding Block 55.

2. The Court denies the Motion for Summary Judgment directed to Count I of the Amended Complaint, without prejudice, and finds as follows:

- (A) that Sections 4.1.1, 4.1.2 and 4.1.3 of the MIPSAs should be read in pari materia,
- (B) that both the Plaintiffs and Defendants have advanced reasonable interpretations of Sections 4.1.1, 4.1.2 and 4.1.3 of the MIPSAs based on the current record,
- (C) that based on the record currently before the Court, Sections 4.1.1, 4.1.2 and 4.1.3 of the MIPSAs are subject to more than one reasonable construction, and
- (D) that on the record presented the Court finds that Sections 4.1.1, 4.1.2 and 4.1.3 of the MIPSAs are ambiguous and that based on the language of the sections themselves, they cannot be harmonized.

Accordingly, the Court will take parol evidence from the MIPSAs' drafting lawyers and the parties on what the intentions were regarding the instant issues regarding Sections 4.1.1, 4.1.2 and 4.1.3.

3. The Court denies the Motion for Summary Judgment directed to Count II of the Amended Complaint, without prejudice. The Court rejects Plaintiffs' interpretation of Section 4.3 of the MIPSAs and agrees with Defendants' interpretation, and concludes that Section 4.3 of the MIPSAs is plainly and unambiguously written, and precludes only "entering into a transaction" (and does not preclude negotiating, expressing an interest in, or taking preliminary steps to reach a deal with the CRA) during the prohibited time period. However, Defendants have not yet come forth with evidence demonstrating the absence of a genuine issue of material fact on whether Defendants in fact entered into a transaction, which neither the Court nor the MIPSAs has defined, with the CRA during the prohibited time frame in Section 4.3, and that at this time neither party has demonstrated the absence of a genuine issue of material fact as to that

issue. The parties are permitted to take discovery on what to “enter into a transaction” means in Section 4.3 of the MIPSAs, and whether a transaction was in fact entered into during the prohibited time frame established by Section 4.3. And in the event the facts are undisputed the Court will entertain a motion(s) for summary judgment on this issue at a later date.

4. The parties are ordered to commence their discovery on these issues forthwith.

5. Any party may move for summary judgment at any time, including that the Defendants may renew their Motion in conformity with this Order.

6. Plaintiffs’ Motion to Dismiss the declaratory judgment counterclaims is denied. Plaintiffs shall file their answer and any affirmative defenses thereto within 10 days of June 11, 2020.

7. The parties are further ordered to conduct mediation with Bruce Greer, Esq. no later than thirty days from June 11, 2020. If the matter is not settled after mediation, either party may notify the court and seek a trial setting.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 17th day of June, 2020.



2020-007207-CA-01 06-17-2020 5:16 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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