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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT
Civil Action No.

BOSTON REDEVELOPMENT AUTHORITY,)
Plaintiff)

v.)

SAVIN HILL PARTNERS LLC,)
KENNETH A. OSHEROW, individually and as)
manager of Savin Hill Partners LLC,)
DRISCOLL M. DOCANTO, individually and as)
manager of Savin Hill Partners LLC,)
Defendants)

COMPLAINT

NATURE OF CLAIM

This is an action brought by the Boston Redevelopment Authority d/b/a Boston Planning & Development Agency (“BRA”) seeking specific performance of the covenants contained in an Affordable Rental Housing Agreement and Restriction that Defendant Savin Hill Partners LLC and the individual defendants executed.

JURISDICTION AND VENUE

1. The Superior Court has original jurisdiction over this matter pursuant to Massachusetts General Laws Chapter 212 § 4 and concurrent jurisdiction as a matter of equity jurisprudence under the provisions of M.G.L. c. 214 § 1.
2. Venue is proper because both parties conduct business or reside in Boston, Massachusetts and the property at issue is located in Boston, Massachusetts.

PARTIES

3. Plaintiff Boston Redevelopment Authority (“BRA”) is a public body politic and corporate organized and existing under the laws of the Commonwealth of Massachusetts with a principal office at Boston City Hall, Boston, County of Suffolk, Massachusetts.
4. Defendant Savin Hill Partners LLC is a domestic limited liability company with a principal office located at 109 Savin Hill Ave, Dorchester, Massachusetts (“Defendant”).
5. Defendant Kenneth A. Osherow is a manager of Savin Hill Partners LLC with a business address of 109 Savin Hill Ave, Dorchester, Massachusetts.
6. Driscoll M. Docanto is a manager of Savin Hill Partners LLC with a business address of 109 Savin Hill Ave, Dorchester, Massachusetts.

FACTS

7. Defendant is the record owner of an approximately 7,696 square foot site located at 112-120 Savin Hill Avenue in the Dorchester section of Boston, Massachusetts. (“Premises”).
8. Prior to 2018, Defendant renovated an existing building and constructed additional commercial space to preserve an existing restaurant and create fourteen rental units (“Project”).
9. BRA authorized the Director to enter into the Agreement approving the Project at its Board meeting on February 8, 2018, a material condition of which was Defendant’s obligation to provide an Affordable Unit in compliance with Mayor Thomas M. Menino’s Executive Orders creating the Inclusionary Development Policy, which requires an affordable housing contribution from certain developments in the City of Boston.

10. On July 18, 2018 Defendant executed an Affordable Rental Housing Agreement and Restriction which created at the Premises one Affordable Unit. Exhibit A, recorded in the Suffolk Registry of Deeds at Book 60054 Page 227 (“Agreement”).
11. The Agreement creates an affordable housing covenant running with the Premises for a period of thirty years, with an additional twenty-year extension option. Exhibit A ¶1.
12. The Agreement details the restrictions the Defendant agreed to comply with as the owner of the Premises. Exhibit A at ¶1, 3, 4, 6.
13. The restrictions include, but are not limited to, the requirement to submit to BRA an affidavit of eligibility of potential tenants in order for BRA to verify the Eligible Household Status of applicants, and limits on the amount of rent Savin Hill Partners LLC may charge each year for the Affordable Unit.
14. Defendant has not been in compliance since the Agreement was executed in 2018.
15. Since 2018, Defendant has failed to seek BRA certification of tenants prior to lease execution with eligible households for the affordable unit.
16. Since 2018, Defendant has received rent in excess of the Maximum Affordable Rent stated in the Agreement for the affordable unit. Upon information and belief, Defendant has been renting the affordable unit for at least \$2,700 per month since at least 2021. This amount is far in excess of the Maximum Affordable Rent.
17. On numerous occasions BRA has notified Defendant that it was out of compliance with the Agreement and that they were not authorized to accept any new application files or lease renewals for the Affordable Unit without BRA approval of the certification file for the Affordable Unit.

18. In July 2023 BRA reiterated to Defendant that it was out of compliance with the Agreement. Defendant has a continuing obligation to institute a marketing plan to identify eligible tenants and seek BRA approval for the new tenants and the amount of rent to be charged for the Affordable Unit.

COUNT I
BREACH OF CONTRACT

19. BRA realleges paragraphs 1 through 18 above as if fully set forth herein.
20. Defendant agreed to encumber its Premises with an affordable housing covenant for a period of thirty years by entering into the Affordable Rental Housing Agreement and Restriction.
21. Defendant received valuable consideration for entering into the Affordable Rental Housing Agreement and Restriction, primarily BRA's approval required for its Project.
22. Defendant has breached the Affordable Rental Housing Agreement and Restriction by failing to, among other things:
- a. seek BRA pre-approval of tenants and authorization for the amount of rent for the affordable unit;
 - b. produce required annual reports; and
 - c. provide accurate reports regarding occupancy of the affordable unit.
23. The public is harmed by Defendant's breach to provide affordable rental housing in the City of Boston.

COUNT II
ACCOUNTING

24. BRA realleges paragraphs 1 through 23 above as if fully set forth herein.

25. Defendant has repeatedly violated the Agreement by renting the Affordable Unit without BRA's prior written approval and in excess of the Maximum Affordable Rent.
26. BRA is entitled to an accounting of all rents Defendant has collected in violation of the Agreement.

COUNT III
Enforcement of Affordable Housing Restriction
M.G.L. ch. 184 § 32

27. BRA realleges paragraphs 1 through 26 above as if fully set forth herein.
28. The Affordable Rental Housing Agreement and Restriction recorded against Defendant's Premises is an affordable housing covenant enforceable under M.G.L. ch. 184 § 32.
29. Pursuant to M.G.L. ch. 184 § 32 this affordable housing covenant may be enforced by injunction.
30. Further, pursuant to M.G.L. ch. 184 § 32: "If the court in any judicial enforcement proceeding . . . finds there has been a violation of the restriction then, in addition to any other relief ordered, the petitioner bringing the action or proceeding may be awarded reasonable attorneys' fees and costs incurred."

COUNT IV
Unjust Enrichment

31. BRA realleges paragraphs 1 through 30 above as if fully set forth herein.
32. BRA approved Defendant's application for the Project at its Board meeting, a material condition of which was Defendant's obligation to provide affordable units in compliance with the Inclusionary Development Policy.
33. The individual defendants, as managers of the LLC, had actual knowledge of the

Agreement.

34. Defendants have been unjustly enriched by the failures to comply with the Agreement and generate profit from what should have been a public benefit.

COUNT V
Piercing the Corporate Veil
(Declaratory Judgment)

35. BRA realleges paragraphs 1 through 34 above as if fully set forth herein.
36. The individual defendants, as managers of the LLCs, have exercised pervasive control over the activities of each corporation and engaged in numerous real estate dealings in which obligations are intermingled.
37. The conduct of the individual defendants, as managers of the LLCs, has resulted in fraudulent and injurious consequences to BRA and the public, by generating private profit from a unit that was designated as affordable housing to benefit middle income families.
38. The Court should look beyond the corporate form of the defendant LLCs and issue flexible injunctive relief to defeat the fraud which Defendants have perpetrated on BRA.

WHEREFORE, Plaintiff Boston Redevelopment Authority demands judgment in its favor against Defendant and requests that this Court:

- a. Enter a declaratory judgment that Defendant is not in compliance with the Affordable Rental Housing Agreement and Restriction.
- b. Enter a declaratory judgment voiding any rental arrangement Defendant has entered into

for the affordable housing units without BRA's prior written approval.

- c. Enter an Order requiring Defendant to specifically perform and comply with the Affordable Housing Covenants.
- d. Enter a monetary judgment for BRA for the amount of rent Defendant has collected for renting the Premises in violation of the Agreement since 2018.
- e. Award BRA its costs and reasonable attorney's fees in pursuing this action, as specified by statute.
- f. Grant such other and further relief as this Court deems just and necessary.

Respectfully submitted

Boston Redevelopment Authority
By their attorneys,

/s/ Denise A. Chicoine

Date: February 16, 2024

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