

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FAIR HOUSING JUSTICE CENTER, INC.

Index No. 19 Civ. 1171 (AT)(GWG)

Plaintiff,

**THIRD AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

v.

JDS DEVELOPMENT LLC;
616 FIRST AVENUE LLC;
AMERICAN COPPER BUILDING LLC;
AH AMERICAN COPPER LLC; and
MS AMERICAN COPPER LLC,

Defendants.

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Plaintiff Fair Housing Justice Center, Inc, by and through its attorneys, Cuti Hecker Wang LLP, for its Third Amended Complaint alleges as follows:

INTRODUCTION

1. JDS Development LLC (“JDS”) is one of the largest luxury multi-family residential real estate developers in New York City. With nearly a dozen large residential complexes already under its belt, and several more in the design and construction phase, JDS’s properties have a meaningful impact on housing available to residents of New York City.

2. JDS boasts that it is “an industry leader that’s reinventing the process through which major architectural projects are designed and built.”

3. Unfortunately for individuals with disabilities, that process and JDS’s signature “innovation” amount to a flagrant disregard for long-established legal requirements that newly designed and constructed residential properties must meet certain accessibility requirements and provide equal access to housing opportunities.

4. For over a decade, the Fair Housing Justice Center has worked to level the housing playing field for all New Yorkers by investigating and enforcing through litigation compliance with federal, state, and local fair housing laws. As a result of FHJC's persistent and effective efforts, much progress has been made to afford New Yorkers equal housing opportunities.

5. FHJC commenced a lawsuit against JDS and its partners for the unlawful design and construction of two multi-family residential properties in violation of federal, state, and local fair housing laws. That case was settled in March 2021, and, among other things, JDS agreed to complete a considerable amount of remediation of at the property.

6. JDS then sold the property to a number of entities c/o Black Spruce Management LLC, which assumed joint responsibility of all of JDS's obligations under the settlement agreement.

7. JDS and Black Spruce have flouted their remediation obligations pursuant to the settlement agreement.

8. FHJC now seeks to enforce the settlement agreement.

JURISDICTION AND VENUE

9. The Court initially had subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 3613 because this action involved federal questions regarding the deprivation of Plaintiff's rights under the FHAA, and the Court had supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over Plaintiff's related claims arising under New York State and New York City laws.

10. The Court now has subject matter jurisdiction over this breach of contract claim pursuant to the so-ordered Settlement Agreement, which assumed continuing jurisdiction to

enforce the parties' contract with respect to the monetary and remediation requirements of the settlement.

11. Venue is properly lodged in this District pursuant to 28 U.S.C. § 1391(b) because Defendants' acts of discrimination occurred in this District, and the property that is the subject of this contractual dispute is located in this District.

JURY DEMAND

12. Plaintiff hereby demands a trial by jury.

THE PROPERTY

13. The buildings located at 626 1st Avenue in Manhattan ("American Copper Buildings") are two connected residential apartment buildings with 41 and 48 stories, respectively, and consist of approximately 760 luxury rental apartments. The American Copper Buildings were completed for partial occupancy beginning in 2017, and the project was completed and ready for full occupancy in 2018.

PARTIES

14. Plaintiff FHJC is a non-profit organization incorporated in the State of New York and based in Long Island City. FHJC is dedicated to ensuring that all people have equal access to housing opportunities in the New York region by eliminating housing discrimination and creating open and inclusive communities. FHJC expended staff time and other resources to investigate and respond to Defendants' discriminatory housing policies and practices, which diverted resources away from other FHJC activities. Defendant's discriminatory housing policies and practices also frustrated FHJC's mission to ensure that all people have equal access to housing opportunities in the New York region.

15. JDS Development LLC is a limited liability company formed under the laws of the State of New York, with its headquarters located at 104 5th Avenue, 9th Floor, New York, New York 10011. JDS developed and constructed the American Copper Buildings. In the alternative, upon information and belief, JDS had sufficient control and/or authority to direct, supervise, and/or correct the development and/or construction of the American Copper Buildings and/or to undertake to remedy inaccessible features at the American Copper Buildings so that each property would be accessible to people with disabilities.

16. 616 First Avenue LLC is a limited liability company formed under the laws of the State of Delaware that is registered to do business in New York. 616 First Avenue LLC developed, designed, and/or constructed the American Copper Buildings. Until March 2023, 616 First Avenue LLC owned the American Copper Buildings. Upon information and belief, 616 First Avenue LLC had sufficient control and/or authority to direct, supervise, and/or correct the development and/or construction of the American Copper Buildings and/or to undertake to remedy the American Copper Buildings so that the property would be accessible to people with disabilities. Upon information and belief, 626 First Avenue LLC is an entity related to, affiliated to, and/or otherwise associated with JDS.

17. American Copper Building LLC is a New York limited liability company with an address located at, upon information and belief, c/o Black Spruce Management LLC, 80 Fifth Avenue, Suite 1201, New York, New York 10011. American Copper Building LLC itself and/or through its affiliated and/or related entities owns the American Copper Buildings. Upon information and belief, American Copper Building LLC had sufficient control and/or authority to direct, supervise, and/or correct the development and/or construction of the American Copper

Buildings and/or to undertake to remedy the American Copper Buildings so that the property would be accessible to people with disabilities.

18. AH American Copper LLC is a Delaware limited liability company with an address at c/o Black Spruce Management LLC, 80 Fifth Avenue, Suite 1201, New York, New York 10011. AH American Copper LLC itself and/or through its affiliated and/or related entities owns the American Copper Buildings. Upon information and belief, AH American Copper LLC had sufficient control and/or authority to direct, supervise, and/or correct the development and/or construction of the American Copper Buildings and/or to undertake to remedy the American Copper Buildings so that the property would be accessible to people with disabilities.

19. MS American Copper LLC is a Delaware limited liability company with an address at c/o Black Spruce Management LLC, 80 Fifth Avenue, Suite 1201, New York, New York 10011. MS American Copper LLC itself and/or through its affiliated and/or related entities owns the American Copper Buildings. Upon information and belief, MS American Copper LLC had sufficient control and/or authority to direct, supervise, and/or correct the development and/or construction of the American Copper Buildings and/or to undertake to remedy the American Copper Buildings so that the property would be accessible to people with disabilities.

20. Defendants American Copper Building LLC, AH American Copper LLC, and MS American Copper LLC will collectively be referred to as “Black Spruce” or the “Black Spruce Defendants.”

21. Defendants have materially breached the Agreement.

FACTUAL ALLEGATIONS

Fair Housing Justice Center

22. Since 2005, the mission of the Fair Housing Justice Center has been to eliminate

housing discrimination, promote open, accessible, and inclusive communities, and strengthen enforcement of the fair housing laws.

23. FHJC's efforts to promote open and inclusive communities includes (a) providing information to the public and other non-profit organizations in the New York region about fair housing laws; (b) providing intake counseling to individuals and organizations with allegations of housing discrimination; (c) conducting testing and other investigations of allegations of housing discrimination; (d) making legal referrals to cooperating attorneys; (e) assisting with the preparation and filing of administrative housing discrimination complaints; and (f) providing post-referral litigation support services. FHJC provides these and other services free of charge and without regard to income.

24. When conducting testing investigations into the accessibility of housing accommodations, FHJC dispatches individuals as "testers" – persons who pose as relatives or friends of prospective renters or homebuyers with disabilities for the purpose of obtaining information about the dwellings, including by taking measurements of particular components of the common areas and individual residential units.

25. Prior to participating in a testing investigation coordinated by FHJC, the testers receive training from FHJC, which includes instructions on conducting tests, preparing tester report forms, and using concealed digital audio recorders during the tests.

The Initial Lawsuit

26. Plaintiff commenced this action in 2019 based on FHJC investigations into the American Copper Buildings and another property developed by JDS.

27. FHJC asserted claims against JDS and its partners stemming from the unlawful design and construction of the American Copper Buildings and another multi-family residential

property in violation of accessibility requirements of the Fair Housing Act Amendments (“FHAA”), the New York State Human Rights Law, and the New York City Human Rights Law.

28. The parties actively litigated the case for two years, including extensive motion practice, document discovery including substantial ESI discovery, and the exchange of expert discovery.

29. Plaintiff’s expert reported finding a shockingly high number of non-compliant features in the common areas and dwelling units of the American Copper Buildings.

The March 2021 Settlement

30. The parties resolved Plaintiff’s design-and-construction claims against the initial defendants, including Defendants JDS and 616 First Avenue LLC (the “JDS Defendants”) in a heavily-negotiated long-form settlement agreement that was submitted for Court approval on March 5, 2021.

31. District Judge Analisa Torres of the Southern District of New York so-ordered the settlement agreement on March 8, 2021. ECF No. 218 (the “Agreement”).

32. The Agreement obligated the settling Defendants to pay Plaintiff \$2.9 million as well to undertake significant remediation obligations at both Properties and other injunctive relief. The Agreement also provided for the Court’s ongoing jurisdiction over enforcement of the monetary and remediation elements of the settlement.

33. In particular, Exhibit A to the Agreement set forth the detailed schedule for completing the required remediation at the American Copper Buildings. It specified three categories of remediation: (1) units that were vacant at the time of settlement (“Unoccupied Units”); (2) units that were occupied at the time of settlement (“Occupied Units”); and (3) common areas throughout the American Copper Buildings (“Common Areas”).

34. Paragraphs 25 and 26 of the Agreement required each of the enumerated Common Areas elements to be remediated “as soon as is reasonably practicable” after execution of the Agreement.

35. Likewise, Paragraphs 25 and 28 of the Agreement required the JDS Defendants to remediate each of the Unoccupied Units on the same “as soon as is reasonably practicable” timeline.

36. Paragraph 31(a) of the Agreement required remediation of the thresholds into and throughout the Occupied Units on the same “as soon as is reasonably practicable” timeline.

37. The parties anticipated that the required remediation of the Common Areas, the Unoccupied Units, and the thresholds into and throughout the Occupied units would occur within “approximately” two years, unless more time was required due to “acts of God, force majeure events, other unforeseen circumstances, or other events beyond the control of [JDS] (including, but not limited to, the COVID-19 pandemic, permit delays, unavailability of materials, or limited access or refused access to occupied units).”

38. Paragraph 26 governs what happens if the JDS Defendants decided to sell the American Copper Buildings. It provides:

The sale or transfer, in whole or in part, of an ownership interest in the [American Copper Buildings] by [JDS] shall not affect the obligation of [JDS] to complete the remediation of the [American Copper Buildings} required by this Agreement. Should [JDS] sell or transfer any ownership interest in the [American Copper Buildings] prior to the completion of the remediation required by this Agreement, [JDS] shall provide written notice to each buyer or transferee that [JDS] are required to complete the remediation required by this Agreement, and [JDS] shall either (i) complete all required remediation prior to the sale or transfer or (ii) obtain written consent of the buyer(s)/transferee(s) to allow [JDS] to complete the remediation required by this Agreement after the sale/transfer, or (iii) cause the buyer/transferees to assume the obligations of [JDS] set forth in this Agreement.

39. Paragraph 64 of the Agreement sets forth the requirement that Plaintiff must provide written notice of alleged breach of the Agreement, following which the allegedly breaching parties have 45 days to cure any non-compliance.

40. Paragraph 65 of the Agreement provides that in the event Plaintiff prevails in a motion to enforce the Agreement, it shall be entitled to recover from the affected Defendant all attorneys' fees and costs reasonably incurred in connection with such motion.

JDS Sells the American Copper Buildings to Black Spruce

41. On or about March 1, 2022, the JDS Defendants sold the American Copper Buildings to Black Spruce.

42. This sale did not cause JDS's obligations under the Agreement to be extinguished.

43. During the first year following the settlement, the JDS Defendants completed only one of approximately 132 Common Areas remediation elements, and it had fully remediated fewer than 100 out of 762 dwelling units.

44. Towards the end of the second year following the settlement, only 26 out of approximately 132 Common Areas elements had been completed, and only approximately 384 of the 762 dwelling units had been fully remediated.

45. On February 24, 2023, Plaintiff served a Notice of Breach pursuant to Paragraphs 62 and 65 of the Agreement, which triggered a 45-day cure period.

46. That Notice of Breach enumerated the JDS Defendants' and Black Spruce's numerous instances of non-compliance with the Agreement, including, *inter alia*, (a) failure to complete remediation of 46 units within the 120-day period required by Paragraph 31(c) of the Agreement; (b) failure to complete required remediation of the Common Areas elements "as soon as is practicable" pursuant to Paragraph 26 of the Agreement; (c) failure to complete

required remediation of the Unoccupied Units “as soon as is reasonably practicable” pursuant to Paragraphs 28 and 29 of the Agreement; (d) failure to complete required remediation of all inaccessible thresholds into and throughout all Occupied Units “as soon as is reasonably practicable” pursuant to Paragraph 31(a) of the Agreement; (e) failure to comply with the reporting requirements regarding vacancy of Occupied Units set forth in Paragraph 33; and (f) failure to comply with the quarterly reporting requirements regarding completed remediation in the Unoccupied Units pursuant to Paragraph 30 of the Agreement.

47. The 45-day cure period elapsed on April 10, 2023.

48. Remediation of some additional dwelling units occurred during the cure period. Remediation of more than 300 dwelling units has yet to be completed, and upon information and belief, no additional Common Areas remediation elements have been completed since November 2022.

49. Neither the JDS Defendants nor Black Spruce has identified any reason for the delay in completing the required remediation recognized in the Agreement.

FIRST CAUSE OF ACTION
(Breach of Contract – Against all Defendants)

50. The Agreement is an enforceable contract through which the settling defendants agreed to undertake a number of obligations in exchange for Plaintiff’s release of its claims against them relating to the alleged violations of federal, state, and local fair housing laws.

51. The JDS Defendants and Plaintiff were parties to the Agreement.

52. Pursuant to the Assignment and Assumption of Contracts dated March 1, 2022, Defendant Black Spruce assumed joint responsibility for all of the JDS Defendants’ obligations under the Agreement.

53. Pursuant to Paragraph 36 of the Agreement, the JDS Defendants' obligations under the Agreement were not extinguished by the sale of the American Copper Buildings to Defendant Black Spruce.

54. Plaintiff has materially performed its contractual obligations under the Agreement.

55. The JDS Defendants and Defendant Black Spruce have materially breached their obligations under the Agreement to timely complete the agreed-upon remediation of the American Copper Buildings.

56. As a result of Defendants' breaches of the Agreement, Plaintiff has suffered damages in an amount to be determined at trial.

57. As a result of Defendants' breaches of the Agreement, Plaintiff and the population it serves are suffering ongoing irreparable harm for which there is no adequate remedy at law.

58. Accordingly, Plaintiff is entitled to monetary damages, injunctive relief, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. An order and judgment declaring that Defendants materially breached the Agreement by failing to timely comply with numerous remediation obligations set forth in that Agreement;
- b. An injunction requiring the Black Spruce Defendants to complete the outstanding remediation of the American Copper Buildings forthwith;
- c. An order and judgment awarding monetary damages to Plaintiff FHJC to compensate it fully for Defendants' breaches of the Agreement;

- d. An order and judgment awarding Plaintiff FHJC reasonably attorneys' fees, costs, interest and expenses incurred in enforcing the Agreement;
- e. Interest on any and all such awards; and
- f. Any further relief that may be just and proper.

Dated: New York, New York
July 14, 2023

By: /s/ Eric Hecker
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