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\$1B Miami Development Endangers Neighbors, Gallery Says

By Nathan Hale

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Law360. Miami (November 21, 2013, 5:34 PM ET) -- A Miami art gallery and framing shop sued the builders of the \$1 billion downtown Brickell CityCentre project in Florida court on Monday, claiming the work is causing damage and danger to the neighboring business and to people who work and shop there.

Frame Art Inc. and owner Graciella Juelle Zayden filed claims of nuisance, trespass and negligence against developer Swire Properties Inc., contractor Turner Construction Co. and Maxim Crane Works LLC.

The dispute pits a small-business owner against one of the largest development projects under way in the Miami area. The \$1.05 billion, 9-acre development will feature a luxury shopping center, two residential towers, a hotel, a wellness center and Class A offices. Phase 1 of construction is expected to be completed by the end of 2015, according to Swire. The developer also recently **unveiled plans** for an 80-story mixed-use tower at 700 Brickell Ave.

"We're next door to a major high-rise project going up, and they have not alerted us to the effects of it on this building," Zayden's attorney, Ron Weil of Weil Quaranta McGovern PA, told Law360.

Zayden, whose store is located on Seventh Street along the western side of the project, is seeking an injunction to ensure the construction does not cause further damage and endanger her and her property, including making sure tower cranes do not hang over her property. She is also demanding delivery of the project's engineering, soil studies and building plans that show the construction's effects on her property.

"As of the filing of this action, the dangerous and disruptive construction activities of defendants threaten the safety of plaintiffs and their clients and employees, as well as the property interests and business activities," the complaint says.

Zayden is also seeking compensatory damages and reserved the right to amend her complaint to possibly pursue punitive damages.

"We have a building that is in jeopardy, and we have people that are feeling unsafe, and we have defendants who have ignored efforts to address the concerns expressed to them," Weil said.

Once construction started around July 2012, the Frame Art building was subjected to violent tremors and vibrations as excavation began and structural pilings were driven into the ground on the CityCentre site. The work resulted in damage to the Frame Art building, including cracks in cement block walls, floor and roof membrane and settling of the floors as lateral support was compromised, according to the complaint.

The cracks led to water damage, affecting some of the artwork inside. There has also been excessive dust and debris and intolerable noise, and employee and customer

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Complaint

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vehicles have been sprayed with cement, Zayden says.

Additional concerns arose in September 2013, when two large tower cranes were installed on the western edge of the CityCentre site. The cranes' booms and the heavy construction materials and equipment they lift routinely extend over the Frame Art property line, the suit says.

"Tower crane operation is an inherently dangerous activity," Zayden says. "Construction materials, reinforced steel rods or even construction debris suspended hundreds of feet in the air pose an imminent threat of harm to the safety of plaintiffs, their employees, and their customers and clients and their property."

Weil said that he expects the court will at least order the defendants to provide the requested documents on engineering and soil studies. He said that as far as the plaintiff could tell, the city's buildings department also did not have some of the core studies and plans that would normally be filed there.

Engineers hired by the plaintiff have suggested that the builders need to move the bases of the tower cranes away from the Frame Art property, he said.

"We need to be informed, and we need to be assured of the safety [precaution] that is occurring there, and if they won't do that voluntarily, then we will get an injunction," Weil said.

Representative for the defendants did not respond to requests for comment Thursday.

Frame Art and Zayden are represented by Ronald P. Weil, Mary Olsweska and John M. Quaranta of Weil Quaranta McGovern PA.

Counsel information for the defendants was not immediately available.

The case is Frame Art Inc. et al. v. Swire Properties Inc. et al., case number 2013-35903-CA-01, in the 11th Judicial Circuit Court of the State of Florida.

--Editing by Edrienne Su.

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Ronald Weil

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