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Judge Sides With Brickell City Centre on Falling Debris Complaints From Shop Next Door

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A small business is stepping up a year-old legal fight against its gigantic neighbor, Brickell City Centre, claiming construction activity is dropping potentially dangerous debris on its Miami property from hundreds of feet in the air.

The trial judge refused to grant relief to Frame Art Inc. earlier this year and denied subsequent requests for an emergency injunction. The custom frame shop is now poised to file what would be its fourth emergency action against Brickell City Centre developer Swire Properties Inc.

In the original complaint, Frame Art sued Swire, general contractor Turner Construction Co. and crane operator Maxim Crane Works LLC, claiming falling construction materials hit its walls, roof and support beams.

The brief also said construction activity on the nine-floor garage next door damaged customers' vehicles and cracked the building's neon sign. The legal filing alleged cranes were precariously transporting concrete slabs weighing several tons above the Frame Art building and illegally trespassing in its air rights.

"Chunks of concrete large enough to kill a man have fallen on Frame Art's property," read an injunction request filed in January as a follow-up to the lawsuit. Another injunction request in March claimed a 10-pound metal plate fell from the construction site and caused new damage to the Frame Art roof.

Yet another filing in May claims a threaded rod from the Brickell City Centre site fell on the roof. A later filing in July came with a police accident report which noted a "stress cable cap" from the project "got ejected into the street" and struck a moving vehicle driving by Frame Art.

In response, Swire, Turner and Maxim noted netting and a barrier wall protection system made it all but impossible for anything but small pieces of debris to fall from the construction

site. They also questioned just how fearful Frame Art's principals really were about falling materials, filing a photograph of someone relaxing at a picnic table set up on Frame Art's roof in April.

The defendants conceded the crane design allowed them to "weathervane" and partly sway over the Frame Art property during unloading but vehemently denied any loads were dangled above the shop's roof. Pictures presented by the plaintiff showing concrete slabs and portable toilets being transported over the Frame Art premises were an "optical illusion," the defendants said.

Sae nd Compliant

After eight days of hearings, Miami-Dade Circuit Judge Norma Lindsey sided with the defendants in September, basically dismissing the plaintiff's testimony about objects falling on the Frame Art building as inconsistent with the safety measures taken by Brickell City Centre.

The judge agreed with the defendants that "unless the crane system is malfunctioning," it's impossible for loads to be carried over the Frame Art property. As to the intermittent intrusion of the crane in Frame Art's air rights, Lindsey wrote, "The proper remedy is to assess the defendants an appropriate rent."

Miami attorney Stephen Binhak of the Law ffice of Stephen James Binhak, who represents Swire and the other defendants, said he was "very pleased that the court has ruled on two separate occasions against Frame Art."

"Brickell City Centre has repeatedly proven that the project is safe and is operating in compliance with all applicable local state and federal rules," he said. The defendants "will continue to vigorously defend this case in the trial court and the court of appeals."

In spite of the legal setbacks so far, plaintiffs attorney Ronald Weil of Weil uaranta Mcovern told the Daily Business Review that he's determined to fight on. An appeal of the latest injunction denial is in the works as are additional requests based on new instances of objects falling on people and property.

"Subsequent to the court's original denial of injunctive relief, a concrete piece went through the awning of the Frame Art entrance," Weil said. "The global thing about this case is that the evidence is so overwhelming that debris is falling not just on our property, but on passing motorists. Just over the past week, an employee in the parking lot was injured in the shoulder. The higher the project goes, the longer these concrete items are going to fall and the more harm it's going to cause to passersby."

A mishap involving Brickell City Centre worker on ct. 1 underlines questions about the project's safety "even though the safety measures they take with their own employees are much better than the ones they use to safeguard our property," Weil said. "We will not rest until something is done, and we can't simply rely on market forces to sort everything out."