

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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PIZZAROTTI, LLC,

Plaintiff,

Index No.

-against-

FPG MAIDEN LANE, LLC and
FORTIS PROPERTY GROUP, LLC,

VERIFIED COMPLAINT

Defendants.
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Plaintiff, Pizzarotti, LLC ("Pizzarotti"), by its attorneys, Peckar & Abramson, P.C., as and for its verified complaint against defendants FPG Maiden Lane, LLC ("FPG") and Fortis Property Group, LLC ("Fortis") alleges as follows:

1. Pizzarotti is a Delaware limited liability company duly authorized to do business in New York.
2. On information and belief, FPG Maiden Lane, LLC is a Delaware limited liability company duly authorized to do business in New York.
3. On information and belief, Fortis is FPG's designated owner's representative and a Delaware limited liability company duly authorized to do business in New York.
4. By written agreement dated December 5, 2015, Pizzarotti entered into a construction management agreement with FPG ("CMA"), pursuant to which Pizzarotti agreed to perform certain specified construction management services required for the construction of a 58-story high-rise residential building along the East River waterfront

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in downtown Manhattan, situate at 161 Maiden Lane, New York, New York (the "Project").

5. During construction, Pizzarotti learned that prior to Pizzarotti's commencement of work, FPG engaged non-party RA Consultants ("RA") to prepare a geotechnical report regarding deep foundation system options for the Project.

6. Pursuant to a geotechnical report dated November 13, 2014, revised November 18, 2014, RA advised FPG that due to soil conditions at the Project site, RA recommended deep foundation piles driven into bedrock. A pile supported foundation is the same type of system used in the construction of all other buildings in the vicinity of the project. RA advised that foundation settlement and differential movement would be negligible if deep piles driven into bedrock were used for the project's foundation. RA also advised FPG that, as a "technically feasible" alternative to driving deep piles into bedrock, soil improvement could be performed, but warned FPG that the soil improvement alternative would result in an anticipated two inches of settlement of the foundation, with an anticipated one inch of differential settlement as the load of the superstructure is added to the improved soil foundation.

7. FPG elected to go with the soil improvement option for the Project and engaged someone other than Pizzarotti to perform that work. The details of the foundation system were never provided to Pizzarotti.

8. On information and belief, cost was FPG's primary consideration in electing to proceed with the soil improvement foundation method, rather than deep foundation piles driven into bedrock.

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9. After the soil improvement foundation was complete, Pizzarotti and its subcontractors mobilized on site and poured a mat slab atop the improved soil foundation. Thereafter, Pizzarotti proceeded with the concrete superstructure work, which superstructure topped out in or about September 2018.

10. As the superstructure progressed through the mid-rise floors during the Spring of 2018, the building began to exhibit a noticeable leaning condition, predominantly leaning toward the north.

11. In correspondence dated April 17, 2018, the concrete superstructure subcontractor, RC Structures, Inc., advised that "...there are structural issues, unusual settlement up to 3 inches, and the building is leaning 3 inches to the north" and requested direction from FPG's engineer of record, WSP, as to "how to proceed in light of these structural issues."

12. On June 13, 2018, Pizzarotti's curtain wall subcontractor, AGM Deco, advised FPG and Pizzarotti, among others, that the curtain wall frame already installed in the East side terrace showed approximately two inches difference to the north from Floor 11 to 21.

13. After investigation and testing, it was confirmed by FPG and its consultants, that the building was in fact leaning, as a rigid body, outside of its vertical control.

14. On information and belief, FPG and its consultants confirmed that this leaning condition was attributable entirely to the very settlement of the foundation beneath the mat slab that RA Consultants had expressly warned of in their Geotech Report.

15. On information and belief, under the weight of the superstructure, the building is now exhibiting a bowing or curve in its verticality that is due entirely to said leaning condition caused by the foundation settlement.

16. On information and belief, the building is still moving as the foundation continues to settle and as additional load is added to the structure, and will continue to do so absent appropriate remedial measures.

17. To date, there has been no communication to Pizzarotti regarding engineering studies and assessments detailing the amount of movement experienced to date, or the amount of movement anticipated in the future, particularly as load is added to the structure.

18. On information and belief, the official, filed design has not been re-designed to accommodate the leaning condition of the building, and numerous aspects of the project must be re-designed before work can proceed.

19. Although the superstructure has been complete since September of 2018, the curtain wall system has been stalled for months because FPG and its design professionals and consultants have refused or neglected to provide a comprehensive redesign of the curtain wall system to accommodate the leaning and curved condition of the building, and the movement of the structure because of the anticipated further settlement of the foundation.

20. Based on expert engineering information and analysis, the increased load from heavy construction elements (such as curtain wall, and water weight for stabilizing tanks and pool, as well as the anticipated interior fixtures and finishes) yet to be added

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to the structure, as well as future live load elements of tenants and furniture, fixtures and equipment, will cause additional settlement and movement.

21. Pizzarotti has the following service and safety concerns:

a) Strength of the cladding attachments not only in the static lean condition but also in a design wind storm condition. As the change in lean has not been predicted it cannot be incorporated in the facade panel engineering. The impacts of this can range from inoperable windows to breaking windows and components falling to the street.

b) Similarly, the elevator rails have been set to be vertical. However, as the elevator rails continue to lean from vertical the tolerance of the elevator to operate during even mild wind events decreases.

c) Waterproofing becomes a critical issue with the continued lean of the building. Given notches or cut-outs in the balcony slab and relocated embedment there is a potential risk of water leaks and intrusion from the balcony.

d) Steel corrosion arises at the balcony area as a resultant of concrete slab notches and relocation of box-outs for curtain wall anchors.

e) Strength of the cladding attachments not only in the static lean condition but also in a design wind storm condition.

f) Depending on the severity of the ongoing movement structural concerns for the building also arise.

22. The building structure has settled and moved to such a degree that the structure is encroaching on a neighboring property line.

23. In light of the above, in order to ensure the safety of workers, the public and adjoining property, and ultimately, the building occupants, not to mention the proper functioning of the curtainwall and elevator systems, the work on this Project should not proceed any further until the expected future movement of the building (under the design anticipated full load) is appropriately assessed, understood, communicated to Pizzarotti, and managed from a design standpoint.

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24. Defendants have failed to provide Pizzarotti with sufficient design information, as required by the CMA, for Pizzarotti to proceed with the work in a safe and proper manner.

25. Pizzarotti has duly performed all of the terms and conditions of the CMA on its part to be performed except to the extent prevented or interfered with by defendants.

26. The stoppage of the work is appropriate and necessary considering Pizzarotti's concerns for the safety of persons and property due to the ongoing movement of the building, which has not been accurately or fully communicated to Pizzarotti, and the expected future movement of the building which has not been communicated to Pizzarotti by FPG and its consultants.

27. Without critical design information and adequate design direction, including but not limited to the re-design of the curtainwall system and elevators. Pizzarotti is unable to safely and properly proceed with this work.

28. To progress the work in the absence of critical movement and settlement information, and without an appropriate design that takes same into account, is inherently dangerous, reckless, unreasonable and improper.

29. Pizzarotti has no liability for any damages associated with the leaning condition of the building and the encroachment of the structure on a neighboring property line and should be kept indemnified and harmless thereof.

30. By a letter dated March 1, 2019, Pizzarotti notified defendants of its intent to terminate the CMA because the following critical information has not been provided to Pizzarotti by FPG and its consultants, despite months of requests for same, all which is

preventing the work from being able to progress any further in a safe and proper manner:

- a) Evaluation of the final configuration of the building;
- b) Establish position of Curtainwall with respect to the final configuration of the building;
- c) Design direction to rectify the issues related to the tolerances of the Reynaers system
- d) New position of support brackets for the Curtainwall;
- e) Establish the structural and architectural integrity and feasibility of new position of Curtainwall brackets;
- f) Establish the interior architectural integrity and feasibility of interior finishes, including but not limited to location of the Curtainwall mullions, drywall joints and connections between finish elements;
- g) Design new Curtainwall panel dimensions;
- h) Re-issue window schedule as necessary to match any new, Curtainwall panel dimensions, changes to building envelope, or any other changes to the design or design intent;
- i) Design detail for extended Plate and Firestopping from back of Curtainwall to edge of slab;
- j) Remedy for all clearance issues for Curtainwall panel installation;
- k) New position of curbs at the balconies.

31. Due to the design defects and deficiencies attributable to FPG and its consultants, the lack of critical information and workable design going forward, and the failure of FPG and its consultants to openly share critical information and work collaboratively with the build team, including Pizzarotti, critical path work on the project has been stopped for more than 120 consecutive days.

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32. Because of these defects and deficiencies in design and information, and to protect the safety of persons and property, work should not proceed at the Project until a complete and proper remedial design is provided by defendants.

For a First Cause of Action

33. Section 14.1.4 of the General Conditions of the CMA states in relevant part:

If the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

34. Critical path work on the Project has stopped for more than 120 consecutive days through no fault of Pizzarotti, but rather because of the ongoing movement of the building, encroaching of the structure on a neighboring property line, defendants' failure to share information regarding both, and the lack of an adequate remedial design to progress the work safely and properly.

35. Defendants have repeatedly refused or neglected to fulfill their obligations under the CMA, have interfered with the work, and hindered the progress of the Project.

36. Pizzarotti was and is entitled to terminate the CMA pursuant to Section 14.1.4 of that agreement, and recover from the owner as provided in Section 14.1.3.

37. By reason of the foregoing, Pizzarotti is entitled to relief, pursuant to CPLR 3001, declaring that the CMA has been properly terminated as of March 1, 2019, and that Pizzarotti is relieved of any further obligations thereunder.

For a Second Cause of Action

38. In light of defendants' failure to provide the critical information set forth above and proper design documents that adequately address and take into account all settlement and resulting movement and lean of the building and the encroaching of the structure on a neighboring property line, Pizzarotti should have no further obligation to proceed with or perform the curtainwall or elevator systems, any work for which those systems are critical path, or any work that may result in life safety issues arising out of or relating to the lack of such information or adequate design.

39. To avoid the risk of serious injury to persons and property, no further work should proceed on the Project until an adequate and proper re-design is provided by defendants and their consultants.

40. Continued work on the Project exposes plaintiff, its workers and subcontractors, and the public at large to irreparable harm.

41. If the Court does not grant plaintiff declaratory relief pursuant to plaintiff's first cause of action, confirming Pizzarotti's right to terminate the CMA and stop all work on the Project, Pizzarotti does not have an adequate remedy at law absent a permanent injunction.

42. Based on the foregoing, and the reckless and indifferent acts and omissions to act of defendants, plaintiff is entitled to a permanent injunction restraining defendants from directly or indirectly proceeding with work on the Project before an adequate, safe and proper re-design is provided.

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For a Third Cause of Action

43. Pursuant to said CMA, Pizzarotti earned an amount to be determined for agreed on and approved contract work and approved extra and additional work through the date of termination, and potentially beyond, in an amount to be determined, against which defendant FPG has paid only a part of the sum due, leaving a balance in an amount to be determined that is now justly due and owing from FPG to Pizzarotti with applicable interest thereon.

For a Fourth Cause of Action

44. During the Project, Pizzarotti performed additional and extra work at the direction of defendant, with an aggregate fair and reasonable value in an amount to be determined, for which defendant FPG has wrongfully refused or neglected to make payment.

45. By reason thereof, an amount to be determined is now justly due and owing from defendant FPG to Pizzarotti with applicable interest thereon.

For a Fifth Cause of Action

46. During Pizzarotti's performance of the CMA, defendants interfered with and breached the CMA, refused or neglected to provide critical information necessary to progress of the work, interfered with Pizzarotti's relationships with its subcontractors and vendors, and interfered with and disrupted Pizzarotti's operations, because of which Pizzarotti was prevented from maintaining its planned schedule for the completion of the work.

47. Defendants' acts and omissions to act when it should have were unanticipated by the parties when the CMA was entered into and could not have been

reasonably foreseen; constituted the breach of fundamental obligations of the CMA; and were either deliberate or the result of gross negligence, or the result of such reckless disregard of plaintiff's rights to constitute bad faith; or all of those things.

48. By reason thereof, and the foregoing acts and omissions of defendants, plaintiff incurred additional and increased costs of labor, supervision, equipment, materials, field costs, overhead and other costs of construction, in an amount to be determined, which sum is now justly due and owing from defendant FPG to plaintiff with applicable interest thereon.

WHEREFORE, Pizzarotti demands judgment as follows:

(a) On its first cause of action, declaring that the CMA has been properly terminated pursuant to Section 14.1.4 of that agreement;

(b) On its second cause of action, a permanent injunction prohibiting defendants and their agents from proceeding with work on the Project, or requiring plaintiff or its subcontractors or agents from proceeding with work on the Project, until an adequate, safe and proper re-design is provided; and

(c) On its third, fourth and fifth causes of action, in an amount to be determined, with applicable interest thereon; and

(d) Granting plaintiff its costs and disbursements together with such other relief as the court may deem proper.

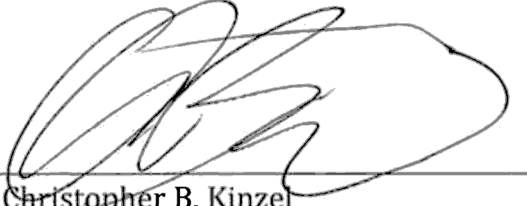
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Dated: March 22, 2019

PECKAR & ABRAMSON, P.C.

By: 

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CORPORATE VERIFICATION

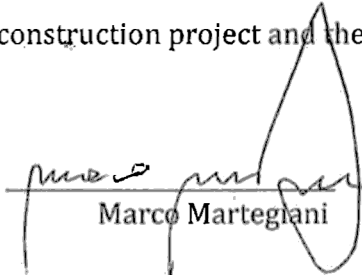
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Marco Martegiani, being duly sworn, depose and say:

I am the Chief Executive Officer of plaintiff Pizzarotti, LLC, a Delaware limited liability company;

I have read the foregoing Verified Complaint and know the contents thereof; and the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

This verification is made by me because Pizzarotti, LLC is a limited liability company and I am an employee thereof. The grounds of my belief as to all matters not stated upon my own knowledge are the books and corporate records maintained by Pizzarotti LLC in connection with subject construction project and the instant dispute.



Marco Martegiani

Sworn to before me this on
21st day of March 2019



NOTARY PUBLIC

GILA MANDELCORN
Notary Public, State of New York
Reg. No. 02MA6360523
Qualified in New York County
Commission Expires 06/19/2021

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