

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SUFFOLK, ss.

C.A. No.: 23-0264E

CHARLES AND CAMBRIDGE CORNER
LLC,

Plaintiff,

v.

147 CHARLES HOLDINGS LLC,
BRAHMA DEVELOPMENT LLC and JJ
HARDSCAPE, INC.,

Defendants.

COUNTERCLAIMS

Pursuant to Mass. R. Civ. P. 13, defendant and counterclaim-plaintiff 147 Charles Holdings LLC (“147 Holdings” or “Plaintiff”) hereby counterclaims against plaintiff and defendant-in-counterclaim Charles and Cambridge Corner LLC (“Charles LLC” or “Defendant”) as follows.

GENERAL ALLEGATIONS AS TO ALL CLAIMS

1. 147 Holdings owns real property located at 147-149 Charles Street, Boston Massachusetts pursuant to the terms of a Quitclaim Deed executed on September 29, 2021, and recorded with the Suffolk County Registry of Deeds at Book 66432, Page 40 (hereinafter “147 Charles” and/or “149 Charles”).

2. Defendant Charles LLC owns real property located at an adjacent abutting parcel, located at 151 Charles Street, Boston, Massachusetts (hereinafter “151 Charles”), which it

acquired on December 22, 2021, by Deed recorded at the Suffolk County Registry of Deeds at Book 66923, Page 105.

3. Prior to Charles LLC purchasing the 151 Charles property, it procured at least one professional inspection of the property conducted by a certain firm known as EBI Consulting, which prepared an Acquisition Property Condition Report in or around December 2021 (the “EBI Report”).

4. The EBI Report detailed several deficiencies and necessary repairs associated with the 151 Charles property, including “worn mortar”, “peeling paint and siding damage”, the “entrance door at 151-151A is out of plumb”, “cracked walls and ceiling in Unit 4-rear”, and further recommending the “replace[ment]” of windows and doors on the 151 Charles property. As well, the EBI Report called for replacement of certain exterior light fixtures, exterior paint as well as internal repairs. The EBI Report specifically noted that “[p]eeling and faded paint finishes ... at the bay windows at 151-151A, particularly at the bottom of the windowsills” were likely caused by “water infiltration” and that external paint was recommended to address the “deteriorated facade areas.” The front door at 151 Charles was observed to be “out of plumb.”

5. Defendant Charles LLC also undertook a third-party observation and assessment of the 151 Charles property facades in or around July 2022. As a result of that engagement, Charles LLC obtained another report in July 2022 that assessed the conditions of the 151 Charles facades (hereinafter the “GRLA Report”). The GRLA Report detailed numerous deficiencies with the 151 Charles property, including: (i) a windowsill that was “deteriorated from extensive water damage”, “step cracks [] observed on the west face of the building”, “loose bricks and deteriorated mortar [] observed below the entry step”, a “rust[ed] fire escape, “rust scale [] observed under the last bumpout at [the] northeast corner of the building”, “cracked brick

masonry and missing mortar joints [] observed on [the] west elevation around the [151] door opening” and “improper[] terminat[i]on” of the roof membrane that was “not lapped to shed water”.

6. Based upon its observations, the GRLA Report recommended that Charles LLC undertake “spot maintenance repairs [] to stop further deterioration or limit potential water infiltration as documented in our observations above.”

7. Upon information and belief, defendant Charles LLC never undertook the repairs recommended in the EBI Report or the GRLA Report or any other remediation of the existing condition of the 151 Charles property since it acquired the 151 Charles property.

8. Prior to 147 Holdings’ acquisition of the 147-149 Charles property, its predecessor in interest entered a certain “Agreement Regarding Proposed Project” dated December 29, 2020, and recorded at the Suffolk County Registry of Deeds at Book 64559, Page 305 (hereinafter the “Neighbor Agreement”).

9. The Neighbor Agreement purports to impose certain use limitations on the 149 Charles property, including the following provision:

The restaurant to be operated on the Owner’s Property as part of the Project shall be closed by no later than midnight of each day, reopening no sooner than 7:00 a.m. on the following day.

Neighbor Agreement, p. 2, §7 (hereinafter the “Use Restriction”).

10. The Neighbor Agreement further provides that:

To the extent that the provisions of this Agreement impose restrictions on the Owner’s Property, such restrictions shall run with and burden the Owner’s Property and the use and occupancy thereof for one hundred (100) years following the date hereof.

Neighbor Agreement, p. 2, §10.

11. Prior to 147 Holdings acquiring its property, a well-known bar known as the Beacon Hill Pub operated on the 149 Charles portion of the property for approximately four (4) decades.

12. Upon information and belief, the Beacon Hill Pub operated nightly until at least 1:00 AM through the following morning.

13. In connection with its operation of the Beacon Hill Pub, the predecessor in interest of 147 Holdings held a liquor license on the 149 Charles property that it later transferred to an entity known as 149 Charles Pub LLC ("149 Charles Pub"). 149 Charles Pub is the current holder of the "liquor license" on the property (the "Liquor License").

14. The Liquor License provides, in relevant part, that the licensee, 149 Charles Pub, may only operate at the specific location, 149 Charles Street, Boston Massachusetts.

15. The issuance of liquor licenses in the City of Boston is regulated by the Boston Licensing Board (the "Licensing Board") pursuant to rules and regulations promulgated by the City under Massachusetts General Laws chapters 138 and 140.

16. Upon information and belief, the Neighbor Agreement was entered into without approval of the Licensing Board or any other municipal department.

17. Mayor Michelle Wu recently appointed a nightlife "czar" to reinvigorate the City of Boston's nightlife scene, including by extending the hours of operation of the City's bars and restaurants.

18. By prohibiting the operation of a bar or restaurant on the 149 Charles street property after 12:00 AM, the Neighborhood Agreement directly contravenes the public policy of the City as repeatedly expressed by Mayor Wu that Boston should have an exciting night life,

including in particular that the holder of a license granted by the Licensing Board be permitted to operate under the full terms thereunder.

COUNT I

Nuisance

19. Counterclaim plaintiff 147 Holdings repeats and re-alleges the preceding allegations as if fully set forth herein and below.

20. By its acts and omissions, defendant Charles LLC has failed to maintain the condition of its adjacent property despite knowing of such conditions.

21. Its failure to maintain its property has, upon information and belief, resulted in structural degradation of the property or a risk thereof.

22. Instead of undertaking repairs to its own property, Charles LLC has attempted to blame 147 Holdings for these problems.

23. As a result of defendant Charles LLC's acts and omissions, its property presents dangerous or potentially dangerous conditions to its neighbors, especially 147-149 Charles.

24. These dangerous conditions interfere with the use, occupancy and marketability of the 147 Charles Street property.

COUNT II

Trespass

25. Counterclaim plaintiff 147 Holdings repeats and re-alleges the preceding allegations as if fully set forth herein and below.

26. On or about March 15, 2023, a representative of defendant Charles LLC did affirmatively enter upon the real property of 147 Holdings located at 147 Charles without the consent of 147 Holdings, and upon information and belief this was not the first or only time such trespass has occurred.

27. Such an unauthorized entry constitutes a trespass for which Charles LLC is liable.

COUNT III

Declaratory Judgment – G.L. c. 231A, § 1

28. Counterclaim plaintiff 147 Holdings repeats and re-alleges the preceding allegations as if fully set forth herein and below.

29. Massachusetts General Laws Chapter 231A, s. 1 provides, in pertinent part, that this court may “make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen ...”.

30. An actual controversy has arisen between plaintiff 147 Holdings and defendant Charles LLC with respect to the validity and enforceability of the Neighbor Agreement.

31. Massachusetts law provides that an agreement may be deemed unenforceable on grounds that it is against public policy.

32. The Neighbor Agreement directly impacts the public as it provides for limitations on the use of property serving the public.

33. 147 Holdings contends that provisions of the Neighbor Agreement are unenforceable as against public policy in that they purport to interfere with and undercut the Licensing Board’s exclusive and comprehensive authority to regulate the issuance of bar and restaurant licenses in the City of Boston under Massachusetts law.

34. In particular, the Neighbor Agreement’s operating hours Use Restriction directly contravenes the stated public policy of the City of Boston to reinvigorate the City’s night life by extending the operating hours of the City’s bars and restaurants.

35. Furthermore, the purported durational limitation of the Neighborhood Agreement of 100 years would impose an extended and overbroad restriction on the Licensing Board’s

licensing powers, stated public policy and public commerce, which constitutes an unreasonable restraint thereof.

36. Accordingly, this Court should determine and declare that any reading of the Neighborhood Agreement's provisions that purport to limit the operating hours of any business located on the 147-149 Charles property is unenforceable as against the public policy of the Commonwealth.

COUNT IV

Unenforceability of Neighbor Agreement – M.G.L. c. 184, § 30

37. Counterclaim plaintiff 147 Holdings repeats and re-alleges the preceding allegations as if fully set forth herein and below.

38. Massachusetts General Laws chapter 184, section 30 provides that in certain circumstances no restriction shall be declared to be enforceable unless it is determined that the restriction is at the time of the proceeding of "actual and substantial benefit to a person claiming rights of enforcement."

39. The statute further provides that:

No restriction determined to be of such benefit shall be enforced or declared to be enforceable, except in appropriate cases by award of money damages, if (1) changes in the character of the properties affected or their neighborhood, in available construction materials or techniques, in access, services or facilities, in applicable public controls of land use or construction, or in any other conditions or circumstances, reduce materially the need for the restriction or the likelihood of the restriction accomplishing its original purposes or render it obsolete or inequitable to enforce except by award of money damages, or (2) conduct of persons from time to time entitled to enforce the restriction has rendered it inequitable to enforce except by award of money damages, or (3) in case of a common scheme the land of the person claiming rights of enforcement is for any reason no longer subject to the restriction or the parcel against which rights of enforcement are claimed is not in a group of parcels still subject to the restriction and appropriate for accomplishment of its purposes, or (4) continuation of the restriction on the parcel against which enforcement is claimed or on parcels remaining in a common scheme with it or subject to

like restrictions would impede reasonable use of land for purposes for which it is most suitable, and would tend to impair the growth of the neighborhood or municipality in a manner inconsistent with the public interest or to contribute to deterioration of properties or to result in decadent or substandard areas or blighted open areas, or (5) enforcement, except by award of money damages, is for any other reason inequitable or not in the public interest. (Emphasis added)

40. The enforcement of the Neighbor Agreement's Use Restriction should be declared unenforceable pursuant to G.L. c. 184, § 30 on the grounds that it is inconsistent with the City of Boston's current public recreation goals, it would impede the reasonable use of the 149 Charles property for the purpose of which it is most suitable, namely a bar or restaurant containing a bar or other place of public accommodation, and it is otherwise inconsistent with the public interest.

41. No award of money damages is appropriate in the circumstances of this case.

JURY DEMAND

Counterclaim-Plaintiff 147 Charles Holdings LLC hereby demands a trial by jury on all claims so triable.

REQUEST FOR RELIEF

WHEREFORE, counterclaim-plaintiff 147 Charles Holdings LLC respectfully requests that the Court, after a trial on its counterclaims:

- (i) Enter judgment in its favor on each of its Counterclaims.
- (ii) Award it damages in amounts to be determined at trial;
- (iii) Grant it the costs and fees incurred in prosecuting its claims;
- (iv) Award it prejudgment interest where available; and
- (v) Grant such other and further relief that the Court deems meet and just.

147 CHARLES HOLDINGS LLC,

By its attorneys,

/s/ Thomas H. Curran

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Dated: March 31, 2023

CERTIFICATE OF SERVICE

I, Thomas H. Curran, hereby certify that on this 31st day of March 2023, I caused a copy of the foregoing document to be served via first class mail, postage prepaid/email on counsel of record.

/s/Thomas H. Curran