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Inside the East End Capital-Australian investor feud over Miami's 100 Biscayne tower

Lawsuits paint picture of internal strife between co-owners

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East End Capital's David Peretz (left) and Jonathan Yormak, with 100 North Biscayne Boulevard in Miami

When East End Capital and an Australian investor bought a downtown Miami office tower five years ago, they started out like others do: bold, ambitious and sure of a windfall.

They shelled out $84 million for the 30-story 100 Biscayne and bet that tens of millions of dollars more in improvements would fill up vacancies. They reportedly eyed a roughly 10 percent increase in occupancy, and an eventual sale of the high-rise and garage at 100 and 130 North Biscayne Boulevard that would allow them to walk away with a hefty gain.

No one would have scoffed at their vision at the time, for the tower was poised for profit. Developed in 1965 by José Ferré, father of the late Miami Mayor Maurice Ferré, the building is steps from Biscayne Bay, in the heart of the Central Business District and just north of the Brickell Financial District. By the time the purchase closed in 2016, downtown and Brickell had been transformed from work hubs deserted at night to bustling centers with a full-time population.

The new residents needed "the more creative and amenity-rich office space" that the property would offer, East End's Jonathon Yormak boasted in a statement after the deal closed.

But court filings reveal that along the way, the tower became mired in litigation, with plans going awry amid strife between the co-owners. It spilled over to a required sale of the building to appease the lender.

In one lawsuit, filed in January, the Australian investor sought to cut New York-based East End out of their joint venture, alleging mismanagement that will lead to a $1.6 million cash flow shortfall this year. In another suit, filed in July, the two are fighting over an $860,000 deposit the Australian entity made to East End over its failed bid to buy out the entire property.

Overall, the Australian investor is seeking $50 million in damages — $20 million for its initial investment and $30 million in lost profits.

The suits allege the tower is in so much financial distress that the lender was on the verge of foreclosure this summer. Instead, a last-minute forbearance agreement was hammered out mandating the sale of the building, and soon.

One potential sale that was expected to close before the forbearance agreement has already fallen apart, leading to more litigation. And any future sale may be hampered by the legal disputes, experts say.

All the animosity is no surprise, some say, as it is the way partnerships often devolve into bad blood in Miami.

“This is South Florida, and it is certainly not abnormal. It is certainly not unexpected,” said attorney Michael Higer of the lawsuits.

“Real estate is the commodity here,” said Higer, of Berger Singerman, who has worked on similar disputes but is not involved in the 100 Biscayne litigation. “If you are a commercial investor, this is the place to be. So prime assets are often fought over, and when money is involved, it is not unusual to see people fight over what their entitlement is.”

Foreign investment

The involvement of overseas investors is among the factors that can lead to a dispute. For years, foreign investors have been lured to Miami. But sometimes they end up feeling let down and swindled by their local partners, legal sources say.

Litigator Harold Edward Patricoff Jr. said the issue with foreign investors is twofold: First off, they may come in with overly high expectations for a windfall, based on stories of an always prospering market. And second, they need to choose their local partners carefully.

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> **HAROLD EDWARD PATRICOFF JR.**

“When you see your friend from Brazil invest $10 million and some years later come out with $30 million, you think, ‘Oh, this is a great place,’” said Patricoff, a Shutts & Bowen attorney who is not involved in the 100 Biscayne litigation but reviewed filings. “But if your partner consumes the profit by paying themselves excessive marketing fees, excessing management fees, then you become disillusioned.”

The case of 100 Biscayne allegedly echoes this scenario. Melbourne, Australia-based 100 & 130 Biscayne LLC came in as a “passive” investor in 2016, when East End needed someone to foot most of the purchase price and improvements, the investor claims in the New York suit filed in January against East End affiliates. The Australian investor shelled out $28 million, comprising $22.8 million toward the purchase and $5.2 million for improvements. Its contribution toward the purchase price gave it an 80 percent stake in the joint venture, according to court filings.

Errol Dorfan and Kim Davis are listed as directors and officers of 100 & 130 Biscayne, according to the suit. But the identity of the Australian investor remains unclear, as directors and officers of a limited liability company are not necessarily the true beneficiaries. In addition, this LLC is registered in Delaware, which does not require the disclosure of LLCs’ true owners and managers.

Madison Avenue-based East End — led by co-founders Yormak and David Peretz — made the smaller initial contribution of $5.7 million, mainly sourced from other investors. But it is the joint venture’s operating member, taking care of construction and management, according to the January suit. Much of the work was done by East End’s Talpiot Management in exchange for 2.5 percent of project revenue and 5 percent of hard construction costs, the suit states.

Essentially, the Australian investor alleges that roughly $2 million in these fees went into the pockets of East End, Yormak and Peretz through Talpiot. It claims the joint venture amounted to a plot to extract fees and improve the tower without increasing occupancy and revenue, according to the suit.

Dorfan wrote in a 2019 email to Yormak: “Capital works have continued despite large revenue shortfalls, significant tenancy issues and losses, and a market outlook for leasing that is extremely challenging and cash-intensive," according to one of the suits. "You have to question how well you have been managing the asset? You appear to have been chasing construction management fees instead of looking after your investors first."

Michael Lynch, the attorney for Yormak, Peretz and East End's affiliate, told the judge the claims are "farcical," as they suggest East End "sabotaged" its own project and reputation "simply to chase $2 million," a court hearing transcript shows.

The Australian entity was not just a "passive" investor unfamiliar with the asset and the local market and trusting East End's occupancy projections and experience, Lynch added. These were mere projections. The Australian investor had examined the asset, and information about the local market is publicly available, he said.

Lynch and the attorneys for 100 & 130 Biscayne did not respond to a request for comment, and Yormak declined comment.

Patricoff, who has represented Australians in similar disputes, said that sometimes the issue is rooted in simple misunderstandings about business ethics.

"This investment involved people from a distant land, Australia, who are probably not very accustomed to the laws or business practices here in the U.S.," he said. "Australian investors in Florida are so surprised about many of the things. … I think Australians believe that Florida real estate is always hot. We all know that is not true."

Impact on sale

The Australian investor's July lawsuit claims owners are under pressure to sell the property, under a forbearance agreement negotiated with the lender.

A push to sell the office tower to BentallGreenOak in 2020 failed and resulted in additional litigation, with a Miami judge in May ordering the owners to refund the would-be buyer's $5.5 million deposit after the JV claimed it was not on the hook for the funds.

Records show that affiliates of New York City-based Annaly Capital Management issued two loans at the time the building was purchased, a primary loan for $52 million and a mezzanine loan for nearly $19 million. Annaly Capital declined comment, but its second-quarter earnings report indicates it almost has completed the sale of its commercial real estate line of business.

East End and the Australian investor had a tentative Sept. 7 deadline to sell, although extensions are allowed, according to court filings in the July suit. Records show no deal has closed.

The internal strife and alleged forbearance might be lowering the potential sale price, experts agree.

“This creates a stress[ful] situation for the seller. And given a rock and a hard place, [the seller] might reduce price or modify terms to make something more attractive because they have deadlines that they need to meet or not get anything out of the transaction,” said Higer, the Berger Singerman attorney.

Then again, the seller can’t go too low on the price, added Joe Hernandez, a Weiss Serota attorney. Its loan is based on pre-pandemic valuations for office real estate, and in light of the market now, the seller might not be getting the offers it needs to pay off the outstanding balance, Hernandez said.

“Maybe that is why they have not sold it yet,” he added.

To Patricoff, the property has a lot of potential in view of the influx of financial and tech companies to South Florida. Still, the pending litigation would be something a buyer would need to absorb before closing.