

Fla. Developer Must Pay \$800K In Fees Over Failed \$160M Suit

By [Carolina Bolado](#)

Law360 (April 25, 2022, 4:06 PM EDT) -- A Florida state court judge has ordered a company affiliated with real estate developer R. Donahue "Don" Peebles to pay \$800,000 in legal fees after the judge ended his \$160 million suit against a rival builder over a redevelopment project in Miami's historic Black Overtown neighborhood.

Judge Michael Hanzman in the Eleventh Judicial Circuit granted final judgment Thursday in Downtown Retail Associates LLC's request for the \$750,000 in attorney fees and \$50,000 in costs it spent defending itself against Peebles' claims that the company breached a contract to redevelop two parcels of land in Overtown when it negotiated with the Southeast Overtown/Park West Community Redevelopment Agency without Peebles.

Downtown Retail had requested \$1.1 million in fees, while Peebles' Overtown Gateway Partners LLC argued that \$650,000 was a reasonable fee. After a hearing on the fees and costs remained unfinished this month, the parties agreed to the \$800,000 figure and informed the court, according to the judge's order.

Overtown Gateway Partners attorney Glen Waldman of [Armstrong Teasdale LLP](#) said his client agreed to the number because Downtown Retail signed off on language in the order that it cannot execute on the judgment until an appeal at the Third District Court of Appeal is concluded, and Peebles' company does not have to post a bond.

Michael Swerdlow, who owns Downtown Retail, and Peebles' Overtown Gateway Partners LLC had partnered to redevelop the land. But in his suit [filed March 2020](#), Peebles claimed Swerdlow conspired with Keon Hardemon, then a Miami city commissioner and chair of the CRA, to ultimately replace Peebles' team with Swerdlow's. Hardemon is now a Miami-Dade county commissioner.

Peebles said he was pushed out of the redevelopment deal and lost out on a projected \$160 million in profits.

Judge Hanzman [granted summary judgment](#) in favor of Downtown Retail Associates on one of two counts of breach of contract in August 2020 after finding that the contract between Swerdlow and Peebles "could not be clearer" and did not bar Swerdlow from negotiating with the CRA on his own.

The contract prohibited a transaction with the CRA within 18 months of any failure of the partnership between Peebles and Swerdlow. The contract between them ended June 13, 2016, and Swerdlow's company entered into a formal development agreement with the CRA in October 2018, well after the end of the 18-month post-contract period.

In his summary judgment order, Judge Hanzman called Peebles a sophisticated party familiar with the request-for-proposal process who could have put in additional restrictions for the 18-month period, such as blocks on discussions with the CRA or on responding to an RFP.

"It's not a difficult clause to draft," the judge said. "It's one sentence. Any lawyer could've put it in the contract."

The judge said that given the sophistication and experience of both parties to the contract, it was not the court's job to relieve them of what may have been an "improvident and unwise bargain."

The judge found that damages for the remaining count were capped at \$15 million, but then disposed of the claim in October 2021.

Alan Kluger of [Kluger Kaplan Silverman Katzen & Levine PL](#), who represents Swerdlow and Downtown Retail, said this case shows that "people who bring frivolous lawsuits are going to lose, and they're going to pay attorney fees and costs approaching seven figures."

He added that the lawsuit "had no merit from the beginning and was brought solely to derail the project."

Overtown Gateway Partners had won the rights to redevelop two properties known as Block 45 and Block 55 through competitive bidding that the CRA held in 2013. The company had proposed a mixed-use development consisting of 500 to 600 apartments and ground-floor retail for Block 55 and similar mixed-use development for Block 45, according to the suit.

Peebles claimed the executive director of the CRA pressured him to explore a deal with Swerdlow because of Hardemon's reluctance to close on the deal with Overtown Gateway Partners. He says that in the interest of moving the project forward, he signed the deal with Swerdlow.

After that partnership broke down, Swerdlow engaged in negotiations with the CRA and eventually signed a deal for Block 55. The Swerdlow Group's website shows plans to build 355,000 square feet of retail space anchored by a Target store, approximately 1,050 parking spaces and 556 apartment units on the parcel.

Block 45's ownership reverted to Miami-Dade County, while Block 55 remains undeveloped.

Overtown Gateway Partners is represented by Glen H. Waldman and Jeffrey R. Lam of Armstrong Teasdale LLP.

Swerdlow and Downtown Retail are represented by Alan Jay Kluger and Steve I. Silverman of Kluger Kaplan Silverman Katzen & Levine PL.

The case is TPC Overtown Block 45 LLC et al. v. Downtown Retail Associates LLC et al., case number 2020-007207-CA, in the Eleventh Judicial Circuit Court of Florida.

--Additional reporting by Nathan Hale. Editing by Robert Rudinger.

Update: This story has been updated to include comment from Swerdlow's counsel.