

**IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION**

WYNWOOD COMMUNITY ECONOMIC  
DEVELOPMENT CORPORATION, INC.,  
et al.,

Plaintiffs,

v.

Case No. 94-12875 CA 25

THE CITY OF MIAMI, et al.,

Defendants.

DADE FOREIGN TRADE ZONE, INC.,

Cross-Plaintiff,

v.

WYNWOOD COMMUNITY ECONOMIC  
DEVELOPMENT CORPORATION, INC.,  
et al.,

Cross-Defendants.

**MOTION OF WYNWOOD COMMUNITY ECONOMIC DEVELOPMENT CORP., INC.,  
AND OSJ MANAGEMENT AND DEVELOPMENT CORP., INC.,  
TO ENFORCE SETTLEMENT AGREEMENT AND FOR  
DAMAGES, SPECIFIC PERFORMANCE, AND ATTORNEYS= FEES**

Wynwood Community Economic Development Corporation, Inc. (AWynwood@), and OSJ Management and Development Corporation, Inc. (AOSJ@), by and through their undersigned counsel, hereby move this Honorable Court to enforce the Settlement Agreement executed in this matter on February 23, 1995, between them, Co-Plaintiff/Cross-Plaintiff Dade Foreign Trade Zone, Inc. (ADFTZ@), and Defendant City of Miami (Athe City@). Further, Wynwood and OSJ request that the City be ordered to fully compensate them for the harm they

have suffered due to the City=s failure to comply with the terms of the above-referenced Settlement Agreement in an amount in excess of \$15 million. To the extent that damages are inadequate, Wynwood and OSJ request that the City be required to perform its obligations under the Settlement Agreement. Wynwood and OSJ also request that the City be ordered to pay their attorneys= fees and costs in connection with their attempts to have the City comply with the terms of the Settlement Agreement. As grounds for this motion, Wynwood and OSJ state as follows:

### **BACKGROUND AND RELEVANT FACTS**

1. Wynwood is a non-profit community economic development corporation that is the holder of a foreign trade zone permit. *See* Affidavit of William Rios in Support of Motion of Wynwood Community Economic Development Corp., Inc., and OSJ Management and Development Corp., Inc., to Enforce Settlement Agreement and for Damages, Specific Performance, and Attorneys= Fees at & 4 [hereinafter cited as *ARios Aff.*].
2. Wynwood has been attempting to develop a foreign trade zone in the City of Miami for more than a decade, but has been stymied at every turn by the City=s discriminatory and retaliatory actions. *See id.* at && 5-6, 16.
3. OSJ is a wholly-owned subsidiary of Wynwood that has been assigned full authority to operate the foreign trade zone. *See id.* at & 7.
4. DFTZ is the developer of the project. *See id.* at & 8.
5. On July 12, 1994, Wynwood filed a lawsuit in this Court against the City and several City officials, Wynwood Community Economic Development Corporation, Inc., et al. v. City of Miami, Case No. 94-12875-CA-25 (11<sup>th</sup> Fla. Cir. Ct.). *See id.* at & 9.

6. In its complaint, Wynwood alleged that the City had discriminated against it on the basis of national origin in violation of the First and Fourteenth Amendments to the United States Constitution. *See id.* at & 10.

7. DFTZ subsequently joined the lawsuit as a co-plaintiff. *See id.* at & 11.

8. On February 14, 1995, an Order of Dismissal was issued in this case based on the Court being advised that the matter had been settled. *See id.* at && 14-15 and Exhibit B attached thereto.

9. Pursuant to the Order of Dismissal, this Court retained jurisdiction to enforce the terms of the Settlement Agreement. *See id.*

10. On February 23, 1995, Wynwood, DFTZ, OSJ, and the City entered into a Settlement Agreement resolving the lawsuit. *See id.* at && 12-13 and Exhibit A attached thereto [hereinafter cited as ASettlement Agreement@].

11. The City has breached most of the terms of the Settlement Agreement. *See Rios Aff.* at && 16-38.

12. Under the terms of the Settlement Agreement, the City was required to execute and issue a Second Corrective Warranty Deed to Wynwood conveying property that the City had promised many years before. *See Settlement Agreement* at & II.A.1; *Rios Aff.* at & 19.

13. According to the terms of the Settlement Agreement, the Second Corrective Warranty Deed was to have been attached to the Settlement Agreement. *See id.*

14. At the time that Wynwood executed the Settlement Agreement, either the Second Corrective Warranty Deed referenced in the Settlement Agreement was not attached or it was attached but Wynwood was unaware that it was deficient. *See Rios Aff.* at & 20.

15. While the City did provide Wynwood with a corrective warranty deed on or about March 16, 1995, that deed was deficient. *See id.* at & 18.

16. The City has refused to provide Wynwood with a correct warranty deed and, as of this date, Wynwood still does not have a correct and proper deed for the property donated to it by the City. *See id.* at & 21.

17. Among other things, the Settlement Agreement required the City to apply, within sixty (60) days of the execution of the agreement, to HUD for a loan that was in turn to be loaned to DFTZ for the project. *See Settlement Agreement at & II.D.2.*

18. In contravention of the Settlement Agreement, the City delayed applying to HUD for a ' 108 loan until the end of July, 1995, which was approximately three months past the time that it was required to do so under the Settlement Agreement. *See Rios Aff.* at & 23.

19. The Settlement Agreement also provided that the City was to Aassert diligence to secure@ the ' 108 loan. *See Settlement Agreement at & II.D.2.*

20. In contravention of that provision of the Settlement Agreement, the City delayed approximately three months in authorizing acceptance of the ' 108 loan from HUD. *See Rios Aff.* at & 24.

21. The most egregious violation of the Settlement Agreement by the City is its failure initially to apply for the entire \$10 million provided for in the Settlement Agreement. *See id.* at && 25-29.

22. Pursuant to the terms of the Settlement Agreement, the City was required to apply for up to \$10 million based on the needs of the project. *See Settlement Agreement at & II.D.2.*

23. The City submitted the ' 108 loan application for \$5.5 million even though Wynwood and DFTZ justified their need for the entire \$10 million. *See Rios Aff.* at && 27-28.

24. In fact, the amount of the ' 108 loan application was reduced from \$10 million to \$5.5 million in the face of the City Attorney=s repeated admonitions to the City that it was

obligated to apply for the entire \$10 million loan pursuant to the terms of the Settlement Agreement. *See id.* at §§ 28-29.

25. The Settlement Agreement provides that the City would make available to Wynwood \$17,000.00 for reasonable architectural expenses associated with the development of certain parcels of real estate for residential development. *See* Settlement Agreement at § II.F.3.

26. Although Wynwood incurred such expenses and submitted proper documentation of those expenses to the City, the City has refused to reimburse Wynwood for those expenses, in contravention of the Settlement Agreement. *See* Rios Aff. at §§ 32-33.

27. The Settlement Agreement also provides that the City is to treat Wynwood as a Community Development Block Grant (CDBG) eligible entity and consider Wynwood's CDBG applications in good faith. *See* Settlement Agreement at § II.G.1.

28. The City has failed to live up to that obligation. *See* Rios Aff. at §§ 34-35.

29. Likewise, the City has failed to express its full and complete support for the Wynwood project and to treat Wynwood like others, in violation of the terms of the Settlement Agreement. *See* Settlement Agreement at § II.G.2; Rios Aff. at §§ 36-37.

30. Instead, the City has maligned both Wynwood and OSJ in the press and to others. *See* Rios Aff. at § 37.

31. The Settlement Agreement also provides that the City shall consider any application by Wynwood to a seat on the International Trade Board when and if any vacancies arise. Settlement Agreement at § II.G.5.

32. Although there have been vacancies on the International Trade Board since the execution of the Settlement Agreement, the City has refused to consider Wynwood for those vacancies. *See* Rios Aff. at § 38.

33. Based on documents previously filed in this Court by DFTZ, it appears that the City has breached the Settlement Agreement in ways other than those listed above. *See* DFTZ=s Motion to Enforce the Stipulation of Settlement, Hold in Civil Contempt, for Sanctions, and for Damages.

34. The City=s breaches of the Settlement Agreement were intentional and wilful. *See* Rios Aff. at & 39.

35. As a result of the City=s intentional and wilful breaches of the Settlement Agreement, Wynwood and OSJ have been damaged in that their working capital has been drained because the City has caused them to lose much needed funding to continue moving the project forward. *See id.* at && 40-41.

36. Moreover, the City=s breaches of the Settlement Agreement have caused Wynwood and OSJ to lose anticipated profits and other opportunities. *See id.* at & 42.

37. The result of the City=s breaches has been that the project has become hopelessly mired in controversy and the cost of the project has substantially increased, making the project less viable. *See id.* at && 43-44.

38. In addition, the City has caused Wynwood and OSJ to lose their goodwill and business credibility in the community and has forced both to the brink of insolvency. *See id.* at && 40, 45.

39. The City=s breaches of the Settlement Agreement have caused DFTZ substantial harm, which, in turn, has caused DFTZ to be unable to fulfill its obligations to Wynwood and OSJ. *See id.* at & 46.

40. At the time the Settlement Agreement was executed, the City was aware of the relationships between Wynwood, OSJ, and DFTZ and that breaches of the agreement relative to DFTZ would harm Wynwood. *See id.* at & 47; Settlement Agreement at p 2.

41. In fact, pursuant to the terms of the Settlement Agreement and at the City=s insistence, the City approved the lease agreement between Wynwood and DFTZ. *See* Settlement Agreement at & II.B.1; Rios Aff. at & 48.

42. Wynwood and OSJ have also incurred expenses for which they should be compensated. *See* Rios Aff. at & 49.

43. The City=s breaches of the Settlement Agreement have caused Wynwood and OSJ to suffer damages in an amount in excess of \$15 million. *See id.* at & 52.

44. All of the harm suffered by Wynwood and OSJ as a result of the City=s breaches of the Settlement Agreement was foreseeable at the time the Settlement Agreement was executed. *See id.* at & 51.

#### **MEMORANDUM OF LAW**

**A. WYNWOOD AND OSJ ARE ENTITLED TO ENFORCEMENT OF THE SETTLEMENT AGREEMENT, WHICH IS A VALID CONTRACT BETWEEN THEM AND THE CITY AND WHICH HAS BEEN BREACHED BY THE CITY.**

In the State of Florida, settlement agreements are highly favored and are to be enforced whenever possible. *See Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985) (A[S]ettlements are highly favored and will be enforced whenever possible.); *see also KCG, Inc. v. Rosen*, 730 So. 2d 807 (Fla. 3d DCA 1999) (per curiam); *De Cespedes v. Bolanos*, 711 So. 2d 216, 218 (Fla. 3d DCA 1998); *Petracca v. Petracca*, 706 So. 2d 904, 912 (Fla. 4<sup>th</sup> DCA 1998) (AIn short, it is the policy of this state to encourage settlements and enforce them whenever it is possible to do so.); *Sun Microsystems of California, Inc. v. Engineering and Mfg. Sys., C.A.*, 682 So. 2d 219, 220 (Fla. 3d DCA 1996) (AThe public policy of the State of Florida, as articulated in numerous court decisions, highly favors settlement agreements among parties and will seek to enforce them whenever possible.); *Metropolitan Dade County v. Fonte*, 683 So. 2d

1117, 1118 (Fla. 3d DCA 1996); *American Express Travel Related Services Co., Inc. v. Marrod, Inc.*, 637 So. 2d 4, 5 (Fla. 3d DCA 1994) (per curiam).

Where a binding settlement agreement has been found to exist, Florida courts have uniformly enforced the agreement. *See, e.g., Robbie*, 469 So. 2d at 1386 (where the court, after determining that the parties had reached agreement on the essential terms of a settlement agreement, held that the agreement should be enforced); *De Cespedes*, 711 So. 2d at 218 (A[G]iven the fact that the material elements were agreed upon by the parties . . . , we conclude that the lower court erred in denying the enforcement of this settlement.); *Fonte*, 683 So. 2d at 1119 (ABecause there is also no question of [the defendants=] violation of the agreement or the consequences of the breach, the trial court was required to enter judgment accordingly.).

In this case, the parties entered into a binding settlement agreement, which set forth the rights and obligations of the respective parties. As described above, the City has breached that agreement by, among other things, failing to: 1) provide Wynwood with a correct warranty deed; 2) timely apply for the HUD ' 108 loan; 3) apply for the entire \$10 million required by the Settlement Agreement; 4) reimburse Wynwood for certain expenses that it incurred; and 5) consider Wynwood=s CDBG applications in good faith. Pursuant to Florida law, Wynwood and OSJ are entitled to enforcement of the Settlement Agreement.

Courts in this jurisdiction have universally held that settlement agreements are governed by the law of contracts. *See Robbie*, 469 So. 2d at 1385 (citing *Dorson v. Dorson*, 393 So. 2d 632 (Fla. 4<sup>th</sup> DCA 1981)) (ASettlements, of course, are governed by the rules for interpretation of contracts.); *De Cespedes*, 711 So. 2d at 217 (citing *Suggs v. Defranco=s, Inc.*, 626 So. 2d 1100 (Fla. 1<sup>st</sup> DCA 1993)) (ASettlement agreements are interpreted according to the law of contracts.); *Federal Home Loan Mortgage Corp. v. Molko*, 602 So. 2d 983 (Fla. 3d. DCA 1992) (per curiam); *Cadle Co., Inc. v. Schecter*, 602 So. 2d 984 (Fla. 3d DCA 1992) (per curiam)

(ASettlements are like any other type of contract and therefore are interpreted and governed by ordinary rules of contract.®); *Kladke v. Phillips*, 535 So. 2d 712, 714 (Fla. 5<sup>th</sup> DCA 1989).

Remedies available for breach of contract include damages and specific performance. *See Beefy Trail, Inc. v. Beefy King Int=l, Inc.*, 267 So. 2d 853, 856 (Fla. 4<sup>th</sup> DCA 1972) (AThe judicial remedies available against one who has committed a breach of contract are damages, restitution and specific performance.®).

1. Wynwood and OSJ Should be Awarded Damages For the Injuries They have Sustained as a Result of the City=s Breaches of the Settlement Agreement.

The law in this jurisdiction is clear that the purpose of an award of damages for breach of contract is to give the injured party the benefit of its bargain by placing that party in the same position as if the contract had been fully performed. *See National Educ. Centers, Inc. v. Kirkland*, 635 So. 2d 33, 34 (Fla. 4<sup>th</sup> DCA 1994) (per curiam) (where the court permitted the recovery of future damages for breach of a contract, holding that A[a] non-breaching party is entitled to recover the benefit of its bargain under a contract.®); *Citibank, N.A. v. Julien J. Studley, Inc.*, 580 So. 2d 784, 786 (Fla. 3d DCA 1991) (per curiam) (AIn a breach of contract action, where a party affirms the existence of a contract, the standard measure of damages is the benefit of the bargain.®); *Juvenile Diabetes Research Found. v. Rievman*, 370 So. 2d 33, 35 (Fla. 3d DCA 1979) (AThe law is clear that the purpose of an award of damages in a breach of contract action is to place the injured party in the same financial position as he would have occupied if the contract has been fully performed.®). Damages may include both past and future lost profits. *See Resorts Int=l, Inc. v. Charter Air Ctr., Inc.*, 503 So. 2d 1293, 1296 n.2 (Fla. 3d DCA 1987) (ASo long as there is a yardstick by which future profits may be measured, such damages may be recovered.®).

Wynwood and OSJ are entitled to be placed in the same position they would have occupied had the City performed its obligations under the Settlement Agreement. In this case, both Wynwood and OSJ have suffered substantial damages as a result of the City's breaches of the Settlement Agreement, which include loss of income and other funding, lost past and future profits and opportunities, increased cost for the project because of the City's delay in performing, and loss of goodwill and reputation. In addition, Wynwood has incurred expenses related to enforcing its rights under the Settlement Agreement. Wynwood and OSJ are clearly entitled to recover those damages, as well as any others flowing from the City's breaches, including breaches relative to DFTZ.

Wynwood and OSJ are also entitled to interest on amounts due them under the settlement agreement. *See Kladke*, 535 So. 2d at 714 (where the court recognized that interest may be awarded on a debt due under a settlement agreement). Accordingly, once it is determined what amounts are due to Wynwood and OSJ under the Settlement Agreement and when those amounts became due, the City should be ordered to pay interest on those sums from their due date until such time as the amounts are paid.

2. Where There is No Adequate Remedy at Law for the City's Breaches of the Settlement Agreement, Specific Performance Should be Ordered.

Where there is a breach of contract, specific performance is required where damages are inadequate or impracticable. *See Northwestern Nat'l Ins. Co. v. Greenspun*, 330 So. 2d 561, 563 (Fla. 3d DCA 1976) (per curiam) (Jurisdiction to decree specific performance of a contract is exercised in two classes of cases: (1) where the contract's subject matter is of such a special nature that damages, when ascertained upon legal rules, would be inadequate; (2) or where damages are impracticable in that no real compensation can be arrived at through an action at law.); *see also Todd v. Hyzer*, 18 So. 2d 888, 891 (Fla. 1944) (Specific performance will be

afforded where one party has performed the contract to such extent >that the parties cannot be placed in statu quo or damages awarded which would be full compensation.=@); *Biscayne Associates, Inc. v. Carson*, 104 So. 2d 871, 872 (Fla. 3d DCA 1958) (A[T]he exercise of equity jurisdiction for specific performance depends upon the question of whether damages at law may not in the particular case afford a complete remedy@).

It is axiomatic that damages for breach of contract involving real property are inadequate and, therefore, subject to specific performance. In *Biscayne Associates, supra*, the court affirmed the entry of a decree for specific performance related to the use of property in a case where the defendant began construction of a drive-in teller window and parking lot on property adjacent to that of the plaintiffs, even though the property was zoned residential. The defendant attempted to have the zoning changed for its property, to which the plaintiffs successfully objected. In exchange for the plaintiffs withdrawing their objections to the defendant=s requested zoning change, the defendant and plaintiffs entered into an agreement that would ensure that the defendant=s use of its property would not be detrimental to plaintiffs= continued residential use of their property. Based on the defendant=s breach of that agreement, the lower court ordered specific performance of the agreement. In affirming the decision of the trial court, the Florida Court of Appeals for the Third District noted that the defendant had Afailed to point out how these matters could adequately be measured for money damages.@ *Biscayne Assoc.*, 104 So. 2d at 872.

Likewise, the court in *Hogan v. Norfleet*, 113 So. 2d 437, 439 (Fla. 2d DCA 1959), recognized that some contracts can only be satisfied by conveyance of the particular property at issue. That court held that specific performance is the correct remedy in such cases. A[I]f, from the nature of the case and the property involved, an adequate remedy at law does not exist, equity

will enforce the contract. @ *Id.* Accordingly, the court in that case reversed a decision by the trial court that dismissed a complaint for specific performance related to the sale of business.

In this case, damages cannot fully compensate Wynwood and OSJ for the City=s breaches of the Settlement Agreement. For example, pursuant to the terms of the Settlement Agreement, the City was required to provide Wynwood with a correct deed for the property that it had granted to it. To date, the City has refused to provide Wynwood with a correct deed. Without a correct deed, Wynwood=s attempts to develop the foreign trade zone will continue to be impeded. Specifically, without a correct deed, Wynwood will continue to be unable to leverage the property to obtain additional funding to complete the project. There is clearly no adequate remedy at law to compensate Wynwood for this breach of the Settlement Agreement by the City. To the extent that money damages will not fully compensate Wynwood or OSJ for the City=s breaches of the Settlement Agreement, this Court should require specific performance by the City.

**B. PURSUANT TO THE TERMS OF THE SETTLEMENT AGREEMENT, THE CITY SHOULD BE ORDERED TO PAY THE ATTORNEYS= FEES AND COSTS OF WYNWOOD AND OSJ RELATED TO THEIR ATTEMPTS TO ENFORCE THE SETTLEMENT AGREEMENT AND PROTECT THEIR RIGHTS THEREUNDER.**

The Settlement Agreement is clear that A[i]n any action arising out of [the] Agreement, whether in contract, tort, or otherwise, the prevailing party shall be entitled to recover all reasonable attorneys= fees and costs, including reasonable attorneys= fees, paralegal and law clerk fees . . . @ The evidence is overwhelming that the City breached the Settlement Agreement. As a result, Wynwood and OSJ were forced to bring this matter back before this Court for resolution. Accordingly, if they prevail, Wynwood and OSJ are entitled to their reasonable attorneys= fees and costs connected with their attempts to enforce the terms of the Settlement Agreement. *See Ritter=s Hotel, Inc. v. Sidebothom*, 194 So. 322, 323 (Fla. 1940) (per curiam)

(in affirming an award of attorneys= fees based on violation of a lease agreement, the court held that A[i]t is fundamental law that contracts may be entered into for the payment of attorneys= fees and when so entered into are enforceable.©). In fact, where the underlying contract so provides, such fees must be awarded. *See Roberts v. Row*, 743 So. 2d 1145 (Fla. 3d DCA 1999) (per curiam) (where the court reversed the trial court=s denial of attorney=s fees in contravention of the underlying contract, holding that A[t]he trial court had no discretion to decline to enforce this provision.©); *Brickell Bay Club Condominium Assoc., Inc. v. Forte*, 397 So. 2d 959, 960 (Fla. 3d DCA); *review denied*, 408 So. 2d 1092 (Fla. 1981) (where the court reversed the trial court=s decision refusing to award attorney=s fees and costs to the prevailing party where the contract specifically provided for the award of such fees and costs).

### **CONCLUSION**

The City has wilfully breached the terms of the Settlement Agreement into which it entered with Wynwood, OSJ, and DFTZ. As a result of the City=s wilful breaches of that Agreement, Wynwood and OSJ have suffered substantial harm, for which they should be fully compensated in an amount not less than \$15 million. In addition, to the extent that money damages will not fully compensate them for the harm they have suffered, the City should be required to specifically perform the terms of the Settlement Agreement. Finally, pursuant to the terms of the Settlement Agreement, the City should be required to pay Wynwood and OSJ their reasonable attorneys= fees and costs in connection with their attempts to enforce the terms of the Settlement Agreement.

WHEREFORE, Wynwood and OSJ request that the Court find that the City has breached the Settlement Agreement and award damages to fully compensate them of at least \$15 million. To the extent that damages will not fully compensate Wynwood or OSJ for the City=s breaches of the Settlement Agreement, Wynwood and OSJ also request that the City be required to

perform certain obligations under the Agreement. At the very least, the City should be required to provide Wynwood with a correct warranty deed to the property that it promised to Wynwood more than a decade ago. Wynwood and OSJ also request that the City be ordered to pay their

reasonable attorneys= fees and costs, as well as any other additional relief the Court deems just and proper.

Respectfully submitted,

Stephen M. Cody  
Florida Bar No. 334685  
16610 SW 82<sup>nd</sup> Court  
Miami, FL 33157-3604  
(305) 233-8073  
(305) 251-5713 (fax)

Cheryl L. Ziegler  
District of Columbia Bar No. 413728  
Lawyers= Committee for Civil Rights Under Law  
1401 New York Avenue, NW  
Suite 400  
Washington, DC 20005  
(202) 662-8600  
(202) 783-5113 (fax)

Attorneys for Wynwood Community Economic  
Development Corporation, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of January, 2001, a true and correct copy of the foregoing was served via first-class mail, postage prepaid, on the following: Alejandro Vilarello, Charles C. Mays, and Deanna D. Gross Rasco, Office of the City Attorney, Miami Riverside Center, Suite 945, 444 SW 2<sup>nd</sup> Avenue, Miami, FL 33130; and Robert A. Stok, Turnberry Plaza, Suite 304, 2875 NE 191<sup>st</sup> Street, Aventura, FL 33180.

Stephen M. Cody