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May 10, 2017

Via NYSCEF, E-mail, and Hand Delivery

Hon. Eileen Bransten
Supreme Court of the State of New York
60 Centre Street
Part 3, Room 442
New York, New York 10007

Re: *AmBase Corp., et al. v. 111 West 57th Sponsor LLC et al.*, Index No.
652301/2016

Dear Justice Bransten:

We are counsel to Plaintiffs in the above-captioned action. We write to respond to the letter of April 19, 2017, filed by Mr. Weiss on behalf of Defendants. At the April 13 oral argument on Defendants' motion to dismiss, the Court requested clarity on what causes of action or portions of causes of action Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint ("Motion") sought to dismiss. Defendants responded on April 17, Plaintiffs replied by letter of April 18, and Defendants then further replied on April 19.

Out of a desire not to burden the Court with further filings, we initially decided not to respond to Defendants' last letter. We believed, and continue to believe, that the arguments in our brief and the presentation in our letter of April 18, 2017, conclusively refute Defendants' representations concerning the scope of their Motion, even as augmented by their further letter of April 19, 2017.

We have since discovered, in the course of third party discovery, a document that casts further doubt on Defendants' representations and arguments concerning Plaintiffs' equity put right. This document underscores why Defendants' motion to dismiss is premature and ill-advised. Defendants should not be permitted to escape liability under Section 11.5 of the JVA,¹ particularly on a motion to dismiss, based solely on Defendant Kevin Maloney's self-serving assertion that a budget document provided to Plaintiffs in August 2016 was a "partial, draft budget." Affidavit of Kevin Maloney ¶ 6 (Nov. 29, 2016), NYSCEF Doc. No. 127.

¹ As in Mr. Weiss's letter, "JVA" refers to the Amended and Restated Limited Liability Company Agreement of 111 West 57th Partners LLC, which was annexed as Exhibit 3 to the Motion.

Briefly, Section 11.5 of the JVA gave Plaintiff 111 West 57th Investment LLC (“Investment”) a right to require Defendant 111 West 57th Sponsor LLC (“Sponsor”) to purchase its interests in the joint venture at a price that would give Investment a 20% return on its investment. This right would be triggered if Sponsor ever circulated a budget in which the hard costs of construction exceeded a certain threshold (specifically, a 10% increase in hard costs over the last approved budget would trigger the put right). *See* Pls.’ Mem. of Law in Opp’n to the Motion at 2 (Dec. 20, 2016), NYSCEF Doc. No. 156 (“Opp’n”). Sponsor could not avoid triggering that right by simply refusing to circulate a budget if costs ever exceeded a certain point; instead, the JVA required Sponsor to circulate regular updates and revisions to the budget. *Id.*

As explained in my letter of April 18, Plaintiffs make two separate breach of contract claims based on Section 11.5. The claim set forth in SAC² ¶ 205(p) concerns Defendants’ refusal to honor the equity put right when Plaintiffs exercised the right based on a proposed budget Defendants belatedly provided in August 2016. It is to this claim that Maloney’s affidavit is addressed, as that affidavit denies that the document in question qualified as a proposed budget within the meaning of Section 11.5 of the JVA.

Besides the obvious point that Maloney’s affidavit is inappropriate on a motion to dismiss, this argument does nothing to refute Plaintiffs’ separate claim, set forth in SAC ¶ 205(j), that Defendants sought to frustrate their equity put right by refusing to circulate any updates or revisions to the budget, as they were required to do,³ after it became apparent that hard costs of construction would exceed the threshold set by Section 11.5 and trigger Plaintiffs’ equity put right. *See* SAC ¶¶ 173–74; Opp’n at 2, 5. Maloney’s affidavit does not deny that an update or revision to the budget was due, nor does it deny that anticipated costs on the project had exceeded the threshold set by Section 11.5. And far from *denying* that Defendants had failed to provide an updated or revised budget to Plaintiffs during the relevant time period, the Maloney Affidavit reinforces that allegation by arguing that even the document Plaintiffs finally received in August 2016 was not a proposed budget.

Defendants’ disingenuous efforts to rely on this affidavit to dismiss *all* Section 11.5-based claims is made all the less tenable by Redacted

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² “SAC” refers to the Second Amended Complaint filed by Plaintiffs, NYSCEF Doc. No. 97.

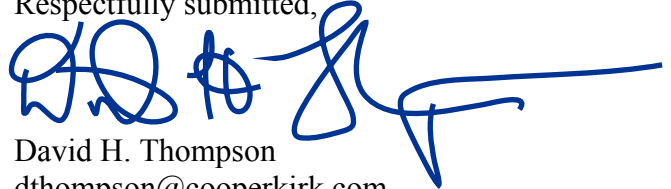
³ The JVA requires “Manager [to] prepare and submit (i) proposed updates and revisions to the Business Plan and Budgets that are then in effect to . . . Investor for its approval pursuant to Section 7.2(a) within thirty (30) days after the end of each fiscal quarter of the Company if necessary and (ii) a proposed new Business Plan and Budget within sixty (60) days of the end of each fiscal year or at such other times if necessary.” JVA § 8.2(b).

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Under these circumstances, the JVA required them to give Plaintiffs the right for which they bargained: the right to cut their losses and exit the Company before more of their investment was eaten up by ballooning costs. Maloney's sophistries concerning the August 2016 budget document should not be permitted to obscure their scheme to deprive Plaintiffs of that right by refusing to provide budget updates to which Plaintiffs were entitled.

We appreciate the Court's attention to this matter.

Respectfully submitted,



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