

**IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA**

DEVELOPMENT ASSOCIATES, INC.,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	SPCV22-01097-MO
v.	)	
	)	
STUDIOSAVANNAH, LLC	)	
D/B/A KAT-5 STUDIOS,	)	
	)	
Defendant.	)	

**COMPLAINT**

COMES NOW, Development Associates, Inc., Plaintiff herein, and files this Complaint against StudioSavannah, LLC, d/b/a KAT-5 Studios, as follows:

**I. PARTIES, JURISDICTION and VENUE**

1.

Development Associates, Inc. (hereinafter "DAI") is a corporation formed and existing under the laws of the State of Georgia with its principal place of business in Savannah, Chatham County, Georgia.

2.

StudioSavannah, LLC, d/b/a KAT-5 Studios (hereinafter "StudioSavannah"), is a limited liability company formed and existing under the laws of the State of Delaware with its principal place of business in Savannah, Chatham County, Georgia. StudioSavannah may be served with process through its registered agent for service of process, United States Corporation Agents, Inc., at 221 N. Broad Street, Suite 3A, Middletown, Delaware, 19709. StudioSavannah is the developer of KAT-5 Studios, a proposed thirty (30) acre sound stage and movie production space in

Savannah, Georgia, expected to open in spring 2023 (See Exhibit A, <https://kat5studios.com>), and is subject to the personal jurisdiction of this Court.

3.

This Court has jurisdiction over this matter pursuant to Ga. Const. art. VI, § 4, ¶ I, and venue is proper pursuant to Ga. Const. art. VI, § 2, ¶ III, VI and O.C.G.A. § 14-2-510(b)(2) and (3) in that the contract at issue in this case is to be performed in Chatham County, the tort, wrong or injury done originated in Chatham County, and StudioSavannah has an office and transacts business in Chatham County.

## **II. Factual Allegations**

4.

DAI incorporates by reference paragraphs one (1) through three (3) of this Complaint as if stated verbatim herein.

5.

DAI is a full-service commercial real estate development company formed by Michael Kistler. DAI has more than thirty-five (35) years of experience developing properties and consulting with clients in all aspects of real estate, including real estate brokers, landowners, property owners, and investors.

6.

StudioSavannah is an LLC formed by filmmakers David Paterson of Arcady Bay Entertainment and Taylor Owenby of ISP Global Capital for the purpose of developing a multi-million dollar sound stage and movie production space in Savannah, Georgia (hereinafter “the Project”).

7.

In or around early 2021, StudioSavannah approached DAI Commercial Realty, LLC, a wholly owned subsidiary of DAI, in regards to assisting in locating, purchasing, and developing the above-referenced proposed Project. The Project would require up to thirty (30) acres of land and an infusion of significant capital at the outset, with the need for additional investors and a significant debt load to bring the Project to fruition.

8.

Using its significant resources, reputation, and experience in the Savannah real estate industry, DAI, through its realty arm, located, secured, and negotiated the purchase of an approximately thirty (30) acre parcel of land in the New Hampstead Planned Unit Development (“PUD”) which was optimal for the Project (hereinafter “the Property”). On July 7, 2021, StudioSavannah’s David Paterson entered into a Commercial Purchase and Sale Agreement to purchase the Property from Robert E. and James R. Anderson for \$1,900,000. (*see* Exhibit B, copy of Purchase and Sale Agreement).

9.

StudioSavannah subsequently approached DAI in regard to coming in as an investor on the planned Project. During the late summer and early fall of 2021, the Parties negotiated the terms of their agreement. On September 15, 2021, DAI sent StudioSavannah a Letter of Intent which set out the terms of their proposed agreement, and which included DAI funding the approximate \$1,900,000 purchase price for the land in the New Hampstead PUD and a to-be-determined ownership split in the Project between DAI and StudioSavannah. (*see* Exhibit C, copy of the Letter of Intent).

10.

The Parties continued to negotiate, as reflected in a subsequent Letter of Intent from DAI to StudioSavannah dated October 7, 2021, which reflected a proposed Joint Venture between DAI and StudioSavannah, with a fifty percent (50%) ownership interest in DAI and a fifty percent (50%) ownership interest in StudioSavannah. (*see* Exhibit D, Letter of Intent).

11.

Following further discussions, on October 11, 2021, the Parties memorialized their agreement in a writing entitled “Term Sheet for DAI,” which was agreed to and executed by both Parties (hereinafter “the Contract”). The Contract set forth that StudioSavannah would assign the Purchase Agreement for the Property to DAI. DAI would invest an initial amount of \$2,000,000 for the purchase of the Property as well as for certain soft costs related to the development of the Project. Title to the Property would be in DAI, with DAI and StudioSavannah entering a twelve (12) month option contract for DAI to deed the unencumbered Property to the Joint Venture formed between DAI and StudioSavannah on the date of a second closing, with DAI either extending the option or making other arrangements to develop or sell the Property if the second closing did not occur within twelve months.<sup>1</sup> In regard to ownership of the Project, the Parties agreed that following the second closing, the ownership of the Project would be fifty percent (50%) to DAI and fifty percent (50%) to StudioSavannah. Specifically, the Parties agreed as follows:

The Project JV is a to-be-formed JV consisting of StudioSavannah, LLC. (GP) and LP members. The overall GP promote within the Project JV as well as LP terms are TBD, but contemplated to be 50% GP / 50% LP after GP earns its full promote. ***The ownership of StudioSavannah, LLC.(GP entity) shall be broken down as follows and issued at second closing: a) 50%- DAI as primary Equity investor in exchange for providing \$2,000,000 in GP “pre-money” equity in the form of the property and cash. b) 50% -Studio as the primary Sponsor of the project in exchange for sweat equity and cash. It is contemplated that unless Studio can obtain***

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<sup>1</sup> The Parties agreed that the second closing was to occur once StudioSavannah secured commitments for the full capitalization of the Project.

LP funding prior to second closing, Studio will need to raise additional GP cash to fund predevelopment expenses to ready the Project for the second closing. Any interest given to other GP investors shall dilute Studio's 50% membership interest of the GP.

(Exhibit E, Contract) (Emphasis added).

12.

The Parties further agreed that DAI would develop the Project and be entitled to a development fee of 3% Development Fee with 25% drawn down at second closing, 65% during construction based on the Completion percentage stated the General Contractor's monthly draws, and 10% at Certificate of Occupancy.<sup>2</sup> (See Exhibit E).

13.

The Parties agreed in the Contract that, "Upon recapitalization, DAI will receive a full return of its total capital contributions, resulting in a one-time payment. ***Remaining profits will be split pari-passu with GP members.***" (See Exhibit E) (emphasis added).

14.

The Contract memorialized all key, material, and essential terms of the Parties' Joint Venture related to the Project, leaving out only non-essential minor details to be resolved at a later date.

15.

Over the following months, DAI spent significant time and resources moving forward with the planned purchase of the Property and development of the Project as joint partners with StudioSavannah as agreed upon by the Parties and pursuant to the terms of the Contract. Among other things, DAI kept significant capital on the sidelines and passed on other investment and business opportunities with the expectation and intent to utilize the sidelined capital on the

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<sup>2</sup> The Development Fee was set forth in StudioSavannah's projections as being approximately \$1,300,000.

purchase of the Property for the benefit of the Joint Venture, as agreed upon by the Parties and set out in the Contract.

16.

Over the following months, DAI continued to put its name and efforts behind the Project and successfully secured the entitlements necessary to get the Project to the starting block, facilitating StudioSavannah's ability to promote the solidity of the Project to potential investors, lenders, tenants, and industry parties.

17.

Upon information and belief, at a point uncertain following the execution of the Contract, StudioSavannah began to negotiate with potential third party investors and/or lenders, and began to explore the possibility of working to cut DAI out of the Joint Venture related to the Project, despite StudioSavannah's promises and DAI's vested rights as reflected in the Contract.

18.

Upon information and belief, StudioSavannah then began to work to cut DAI out of the Joint Venture for the Project, without revealing to DAI its intent to do so. Throughout this time, DAI continued to utilize its efforts, resources, and capital to work toward the benefit of the Joint Venture and development of the Project, as set forth in previously enumerated paragraphs.

19.

In December 2021, DAI prepared and sent to StudioSavannah an operating agreement which restated the previously agreed-upon terms of the Parties' agreement as set forth in the Contract as well as proposed additional non-essential and minor details.

20.

During a conference call between DAI and StudioSavannah on or about January 21, 2022, StudioSavannah for the first time expressed its intent and interest in backing out of the Parties' agreement as set forth in the Contract. Despite StudioSavannah's promises and the clear terms of the Parties' agreement as set forth in the Contract, StudioSavannah proposed significant changes to the agreed-upon Joint Venture. Contrary to the Parties' agreement, StudioSavannah proposed that DAI's initial \$2,000,000 investment for the purchase of the Property and associated soft costs be instead provided by a third party lender, and that DAI be divested of its negotiated and agreed-upon fifty percent (50%) equity interest in the Joint Venture related to the Project.

21.

StudioSavannah attempted to revoke the negotiated agreement that DAI would be an investor and fifty percent (50%) owner of the Joint Venture. StudioSavannah attempted to relegate DAI to being simply a broker and consultant for the deal, with the intent to cut DAI out of the proceeds and profits from the Project, in direct breach of the Parties' agreement as set forth in the Contract.

22.

In a good faith attempt to revive the Joint Venture and the Parties' working relationship, DAI agreed to review and consider StudioSavannah's proposed revisions to the Parties' agreement as set forth in the Contract. DAI remained optimistic that the Parties could reach a mutually agreeable new agreement to modify the existing agreement as set forth in the Contract. However, StudioSavannah provided no reasonable alternative terms to the existing agreement but rather continued in its breach of the Contract.

23.

StudioSavannah thereafter refused to assign to DAI the Purchase and Sale Agreement for the Property, in breach of the Parties' agreement as set forth in the Contract.

24.

Upon information and belief, throughout this time, StudioSavannah continued to negotiate with various potential third-party investors and/or lenders in an attempt to obtain the necessary capital for the Project from sources other than DAI and to cut DAI out from the proceeds and profits of the Joint Venture, as memorialized in the Contract.

25.

Upon information and belief, throughout this time, StudioSavannah further continued to negotiate with potential third-party developers in an attempt to cut DAI out of its role in the development of the Project and concomitant development fee.

26.

At some point thereafter, StudioSavannah obtained sufficient capital to close on the Property without the agreed-upon infusion of capital from DAI. Thereafter, on February 23, 2022, StudioSavannah closed on the sale of the Property. (*see* Exhibit F, copy of the Property Card reflecting the sale of the Property).

27.

StudioSavannah has refused to abide by the terms of the Parties' agreement as reflected in the Contract, by, among other things, cutting DAI out of its role as an investor and developer in the Project, in an attempt to divest DAI of its equity interest in the Project.



## CAUSES OF ACTION

### COUNT I: BREACH OF CONTRACT

28.

DAI incorporates by reference paragraphs one (1) through twenty-seven (27) of this Complaint as if stated verbatim herein.

29.

DAI and StudioSavannah negotiated and entered into the Contract for the Joint Venture, purchase of the Property, and development of the Project, as set forth above.

30.

StudioSavannah has breached the Parties' agreement as set forth in the Contract, by among other things, cutting DAI out of its role as investor and developer of the Project, and as otherwise set forth above, in a wrongful attempt to divest DAI of its equity interest in the Project.

31.

DAI has been damaged and continues to be damaged by StudioSavannah's breach of contract.

### COUNT II: BREACH OF FIDUCIARY DUTY

32.

DAI incorporates by reference paragraphs one (1) through thirty-one (31) of this Complaint as if stated verbatim herein.

33.

As joint venturers related to the Project, and based upon their relationship of mutual confidence, DAI and StudioSavannah owed and continue to owe one another fiduciary duties as a

matter of law concerning the scope of the Joint Venture, including but not limited to the purchase and development of the Project, as well as duties of good faith and utmost loyalty.

34.

StudioSavannah has breached its fiduciary and other duties to DAI by, among other things, cutting DAI out of its role as investor and developer of the Project in an attempt to wrongfully divest DAI of its agreed upon equity interest in the Project.

35.

DAI has been damaged and continues to be damaged by StudioSavannah's breach of its fiduciary and other duties to DAI.

### **COUNT III: FRAUD**

36.

DAI incorporates by reference paragraphs one (1) through thirty-five (35) of this Complaint as if stated verbatim herein.

37.

StudioSavannah made material representations to DAI that StudioSavannah intended to pursue the purchase of the Property and development of the Project as a Joint Venture with DAI, with DAI and StudioSavannah each owning a fifty percent (50%) equity interest in the Project.

38.

Despite these representations to DAI, StudioSavannah intended to, and without the knowledge of DAI, worked to cut DAI out of its role as investor and developer in the Project.

39.

StudioSavannah made the above-referenced misrepresentations in an attempt to induce DAI to continue its efforts and expenditure of resources toward the purchase and development of the Project.

40.

DAI reasonably relied upon StudioSavannah's misrepresentations as set forth above. Based upon this reliance, among other things, DAI kept significant capital on the sidelines and passed on other investment and business opportunities with the expectation and intent to utilize the sidelined capital on the purchase of the Property for the benefit of the Joint Venture, as agreed upon by the Parties and memorialized in the Contract. DAI continued to put its name and efforts behind the Project and successfully secured the entitlements necessary to get the Project to the starting block, facilitating StudioSavannah's ability to promote the solidity of the Project to potential investors, lenders, tenants and industry parties. Based upon its reasonable reliance upon StudioSavannah's misrepresentations, DAI expended significant capital and resources toward the purchase and development of the Project.

41.

DAI has been damaged and continues to be damaged by StudioSavannah's fraud, as set forth above.

**COUNT IV: BREACH OF GOOD FAITH AND FAIR DEALING**

42.

DAI incorporates by reference paragraphs one (1) through forty-one (41) of this Complaint as if stated verbatim herein.

43.

StudioSavannah had an implied duty of good faith and fair dealing to DAI with respect to the performance of the Contract.

44.

StudioSavannah breached the duty of good faith and fair dealing as to DAI by failing to uphold the terms of the Contract, and by negotiating with other parties in secret to remove DAI from the Contract.

45.

DAI has been damaged by StudioSavannah's breach of good faith and fair dealing, and DAI is entitled to damages therefor.

**COUNT V: PROMISSORY ESTOPPEL**

46.

DAI incorporates by reference paragraphs one (1) through forty-five (45) of this Complaint as if stated verbatim herein.

47.

StudioSavannah made promises to DAI that it would operate a long term Joint Venture with DAI in regards to the purchase of the Property and development of the Project, with DAI owning a fifty percent (50%) equity interest in the Project.

48.

StudioSavannah made these promises to DAI to induce DAI to invest its time, reputation and resources in the Project, by, among other things: (1) locating, securing and negotiating the purchase of the Property; (2) keeping significant capital on the sidelines and passing on other investment and business opportunities with the expectation and intent to utilize the sidelined

capital on the purchase of the Property for the benefit of the Joint Venture; (3) investing direct expenses in the Project; (4) putting its name and efforts behind the Project and successfully securing the entitlements necessary to get the Project to the starting block, allowing StudioSavannah's to promote the solidity of the Project to potential investors, lenders, tenants and industry parties; (5) and otherwise spending countless hours and significant efforts furthering the interests of the Project for the benefit of the Joint Venture.

49.

Studio Savannah reasonably expected its promises to induce DAI to invest its time, reputation and resources in the Project, as set forth above.

50.

In reasonable reliance upon these promises, DAI invested its time, reputation and resources in the Project, as set forth above.

51.

DAI's reasonable reliance on StudioSavannah's false promises have caused DAI and continue to cause DAI to suffer significant economic harm and damages.

#### **COUNT VI: ATTORNEY'S FEES AND EXPENSES OF LITIGATION**

52.

DAI incorporates by reference paragraphs one (1) through fifty-one (51) of this Complaint as if stated verbatim herein.

53.

Pursuant to O.C.G.A. § 13-6-11, DAI is entitled to recover attorney's fees and expenses of litigation in an amount to be proven at trial because StudioSavannah's improper and unlawful acts

and omissions are in bad faith and have caused DAI unnecessary trouble and expenses. StudioSavannah's actions have been intentional and demonstrate bad faith in this matter.

### COUNT VII: PUNITIVE DAMAGES

54.

DAI incorporates by reference paragraphs one (1) through fifty-three (53) of this Complaint as if stated verbatim herein.

55.

The acts of StudioSavannah evidence willful misconduct, malice, fraud, wantonness and oppression which entitle DAI to an award of punitive damages under O.C.G.A. § 51-12-5.1.

**WHEREFORE**, DAI prays for the following relief:

- a. For a trial by jury comprised of 12 persons of all issues of fact;
- b. That the Court enter judgment in favor of Plaintiff on all claims;
- c. That Plaintiff be awarded all special damages in an amount to be proven at trial;
- d. That Plaintiff be awarded all general damages in an amount to be determined by the enlightened conscience of a fair and impartial jury;
- e. That Plaintiff recover punitive damages in an amount sufficient to punish Defendant and deter her from future similar conduct pursuant to O.C.G.A. § 51-12-5.1;
- f. That Plaintiff be awarded attorney's fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11;
- g. That the Court tax all costs of this action against Defendant.

Respectfully submitted this 24<sup>th</sup> day of October, 2022.

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