

June 28, 2023

VIA ELECTRONIC MAIL

David Thompson
56th and Park (NY) Owner, LLC
540 Madison Avenue, 8th Floor
New York, NY 10022
dthompson@cimgroup.com

Re: Notices of Intent to Inspect for 432 Park Avenue, Units 78A, 78B and 28H

Dear Mr. Thompson,

I write on behalf of my clients, 432 FF&E LLC and FR-AM One LLC (together, “Owners”), regarding the Notices of Intent to Inspect (“Notices”) that 56th and Park (NY) Owner, LLC (“Lender”) sent to Owners on June 23, 2023, and the subsequent email from Mr. Daniel Vasserman on June 28, 2023 (“Email”). In particular, I write to notify Lender that the “Site Visit” they unilaterally set for 1 p.m. on Friday, June 30, 2023, cannot take place as scheduled or described.

According to the Notices, Lender intends to “inspect [Units 78A, 78B, and 28H (“Units”)] on “June 30, 2023, at 1 p.m.” and that a “photographer will be present with Lender’s representative to take photographs of the [Units].” In the Email, Lender further identifies three individuals—Jared Schwardon, Lucas Donnell, and Michael Parks—as those who will be conducting the inspection, which the Email refers to as a “Site Visit.” Such a “Site Visit,” the Notices explain, is permitted by Section 6 and Section 23 of (i) the “Mortgage (And Assignment of Leases and Rents) and Security Agreement and Financing Statement dated as of May 9, 2022 . . . made by [432 FF&E LLC] to Lender,” and (ii) the Mortgage (And Assignment of Leases and Rents) and Security Agreement and Financing Statement dated as of May 9, 2022 . . . made by [FR-AM One LLC] to Lender” (together, “Mortgages”).

Section 6 (“Maintenance”) of both Mortgages states, in relevant part, that “Mortgagee and persons designated by Mortgagee can enter an [sic] inspect the Mortgaged Premises at reasonable times and upon reasonable notice to Mortgagor.” Additionally, Section 23 (“Inspections”) of both Mortgages states, in relevant part, that “Mortgagee and any person authorized by Mortgagee may enter and inspect the property at reasonable times.”

However, while the language of the Mortgages does provide for some right of inspection, the “Site Visit” contemplated for June 30, 2023, goes well beyond the bounds of what is permitted under those agreements.

To begin with, the provisions quoted above permit entry and inspection (upon reasonable notice and at a reasonable time), only. They do not permit Lender to send real estate brokers to conduct a “Site Visit” to gather information ahead of a property sale. That goes beyond the spirit, if not the letter, of the Mortgages. None of the three individuals identified in the Email are employed by Lender; instead, each is a member of a prominent luxury real estate brokerage company. Given that Lender has also served Owners with Notices of Disposition of Collateral, there is no other plausible explanation for this sudden interest in a “Site Visit” with a trio of real estate salesmen.

Additionally, the reference in the Notices to a “photographer” is unacceptable and rejected. Neither Section 6 nor Section 23 provide for the presence of a photographer, let alone for photographs to be taken. Both Sections allow for “authorized” or “designated” persons, yes, but not for photography. Lender’s attempt to introduce this extracontractual presence into the process is therefore inappropriate and will not be allowed. If Lender does intend to take photographs or otherwise cause someone to take photographs of the Units or any of the interior possessions, furnishings, fixtures, or structures, then be advised that this, at the least, will be treated as a violation of my clients’ (and the current occupants’) rights of privacy under the laws of the State of New York.

Owners are willing to provide access to Lender and its employees (or other designated persons) for an inspection of the Units for defects, damage, or other structural conditions. But any such inspection will be in the presence of Owners’ counsel to ensure that nothing happens that is contrary to the Mortgages or that may otherwise harm Owners, their rights, or their property. Given the need to arrange for a mutually agreeable time in which to conduct such an inspection, the June 30, 2023 date is simply not feasible. Thus, Owners are open to discussing alternative, reasonable dates for said inspection.

By no later than the close of business on Thursday, June 29, provide an acknowledgement that the “Site Visit” that Lender purported to notice for June 30 will not be taking place. Of course, if the three non-Lender real estate agents listed in the Email do come to the Units at the time indicated on the Notices, they will not be admitted as they do not have the right to access the Units for a “Site Visit.”

I look forward to hearing from you regarding alternative dates for conducting a permitted inspection of the Units, and will look for your acknowledgement by the end of the day tomorrow. If you have any questions, you may reach me at jischiller@bsflp.com or by phone at (917) 697-3772. Until then, my clients reserve all rights.

Sincerely,

/s/ Joshua I. Schiller

Joshua I. Schiller

cc: Robert Sacks (sacksr@sullcrom.com)
Daniel Vasserman (dvasserman@cimgroup.com)
Jordan Dembo (jdembo@cimgroup.com)
