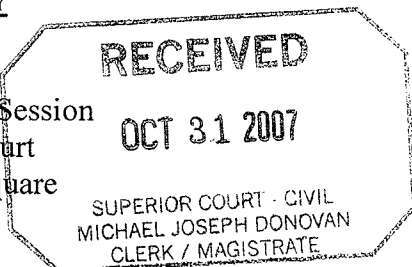


October 31, 2007

VIA HAND DELIVERY

Clerk's Office, Civil
Business Litigation Session
Suffolk Superior Court
Three Pemberton Square
Boston, MA 02108



07-4779 B-L.S.

**Re: Massachusetts Institute of Technology v. Frank O. Gehry & Associates, Inc.,
n/k/a Gehry Partners, LLP and Beacon Skanska Construction Company,
n/k/a Skanska USA Building, Inc.**

Dear Sir/Madam:

Enclosed for filing and docketing in the above-referenced action, please find the following:

1. Complaint;
2. Civil Action Cover Sheet;
3. Plaintiff's Motion for Appointment of a Special Process Server; and
4. Check in the amount of Two Hundred Seventy Five Dollars (\$275.00).

Please date-stamp the enclosed copy to signify receipt of this filing. If you have any questions or concerns, please feel free to contact me. Thank you for your assistance with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa F. Glahn".

Lisa F. Glahn

LFG/af

Enclosure(s)

cc: Joseph Leighton, Jr., Esquire (w/ enclosures)
Stanley A. Martin, Esquire (w/ enclosures)
Mark C. DiVincenzo, Deputy General Counsel (w/ enclosures)
John G. Engle, Program Manager (w/ enclosures)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
BUSINESS LITIGATION SESSION

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiff,

v.

FRANK O. GEHRY & ASSOCIATES, INC.,
N/K/A GEHRY PARTNERS, LLP and
BEACON SKANSKA CONSTRUCTION
COMPANY, N/K/A SKANSKA USA
BUILDING, INC.,

Defendants.

CIVIL ACTION NO: _____

COMPLAINT

Introduction

1. This is an action brought by Massachusetts Institute of Technology (“MIT”) in contract and negligence to recover amounts owed by Defendant Frank O. Gehry & Associates, Inc. (now known as Gehry Partners, LLP) (“Gehry”), a design professional and architectural firm, and Defendant Beacon Skanska Construction Company (now known as Skanska USA Building, Inc.) (“Skanska”), a contractor and construction manager, relating to the design and construction of the Ray and Maria Stata Center at MIT in Cambridge, Massachusetts (“Stata” or the “Project”). Gehry and Skanska committed design and construction failures on the Project which caused, among other things, masonry cracking, efflorescence and poor drainage at the Project’s outdoor amphitheater; efflorescence and mold growth at various locations on the brick exterior vertical elevations; persistent leaks at various locations throughout the building; and

sliding ice and snow from the building. MIT has suffered considerable damage, in the form of investigatory, redesign and remedial work, as a result of the Defendants' failures.

Parties

2. Plaintiff Massachusetts Institute of Technology ("MIT"), is a private, coeducational research university with a principal place of administration at 77 Massachusetts Avenue, Cambridge, Massachusetts.

3. Upon information and belief, Defendant Frank O. Gehry & Associates, Inc. (now known as Gehry Partners, LLP) ("Gehry") was, at all times material hereto, a California corporation with a usual place of business in Santa Monica, California. Gehry Partners, LLP is a limited liability partnership organized under the laws of the state of California, of which Frank O. Gehry & Associates, Inc. is one of the partners.

4. Upon information and belief, Defendant Beacon Skanska Construction Company (now known as Skanska USA Building Inc.) ("Skanska"), was, at all times material hereto, a New Jersey corporation with a usual place of business at 270 Congress Street, Boston, Massachusetts.

Factual Background

5. In the late 1990s, MIT endeavored to create a complex of buildings on a nearly three acre site along Vassar Street in Cambridge designed to catalyze interactions and innovations among MIT's faculty and students in computing, information science, artificial intelligence, and linguistics and philosophy.

6. MIT, as owner, entered into a written contract with Gehry, effective as of July 1, 1998 (the "Architectural Contract"), for professional services to be performed in connection with the design and construction of a new building and related structures at MIT's campus in

Cambridge, Massachusetts known as the Ray and Maria Stata Center for Computer Information and Intelligence Science (the “Project”). In October 2003, MIT and Gehry entered into an Amendment of the Architectural Contract pursuant to which, *inter alia*, all of Frank O. Gehry & Associates, Inc.’s right, title and interest in and to the Original Agreement was assigned to Gehry Partners, LLP.

7. Pursuant to the Architectural Contract, Gehry was responsible for providing, among other things, timely and adequate predesign, schematic design, design development, construction documents, construction phase administration and other additional services for the Project in exchange for payment of a basic fee of approximately \$15,000,000.

8. Gehry was responsible for providing timely and adequate design documents – including a design for the outdoor amphitheater (the “Amphitheater”) – necessary for the construction of the Project in a manner reflecting the ordinary and reasonable professional skill and care exercised by design professionals, architects and/or engineers. In particular, Article 1.1.4 of the Architectural Contract provided: “The Architect shall perform its services hereunder in accordance with generally accepted standards of professional practice applicable to nationally recognized architectural firms experienced in the design of projects of similar size, scope and complexity....”

9. At all times, both before and after execution of the Architectural Contract, Gehry held itself out to be a design industry leader and an experienced, international architectural firm that was fully capable of handling the demands and obligations of this very large Project.

10. MIT also entered into a written construction contract with Skanska with an effective date of March 1, 1999 (the “Construction Contract”) for professional services to be performed in connection with the management and construction of the Project. Under the

Construction Contract, Skanska was responsible for, among other things, providing construction, construction management, building and oversight services as described in the Contract.

11. At all times, both before and after execution of the Construction Contract, Skanska held itself out to be an experienced, national construction company that had managed and built academic projects of the magnitude and scale of the MIT Project.

12. The physical construction of Stata, which was designed by Gehry and built and managed by Skanska, began in or about 2000. The Amphitheater work, in particular, began in or around July 2002 and was substantially complete in or around the spring of 2004. The Project was substantially complete as of late spring 2004.

13. Beginning in the late summer of 2004 and continuing thereafter, it became apparent that (1) considerable masonry cracking existed in the Amphitheater's seating areas that, later investigation revealed, was caused by an improper amount and spacing of control joints in the brick masonry, and (2) efflorescence in the Amphitheater brick was being caused by a flawed drainage design that failed to include a drainage mat under the brick (which is standard in Northeast construction because of climate impacts) that subjected the brick paving to excessive cyclic saturation.

14. MIT was advised by its outside consultants, who were hired to investigate and determine the cause of and fix for the Amphitheater problems, that 100% of the brick masonry in the Amphitheater should be removed and a drainage mat be installed under the brick, and that expansion control joints be installed to reduce or eliminate mortar joint cracking.

15. Thereafter, MIT determined it was reasonable and necessary to repair the Amphitheater by removing the existing brick masonry, and then installing a drainage mat, a brick cavity wall on the vertical surfaces and a pre-cast stone on the horizontal surfaces. In late 2006

and 2007, MIT engaged a designer and a contractor to perform the repair of the Amphitheater at a cost to MIT of in excess of one million five hundred thousand dollars (\$1.5 million).

16. In addition to the problems at the Amphitheater, MIT has discovered additional design and construction problems that include, among other things, (1) efflorescence and mold growth at various locations on the brick exterior vertical elevations; (2) persistent leaks at various locations throughout the building; and (3) sliding ice and snow from the building's window boxes and other projecting roof areas, blocking emergency exits, and damaging other building elements.

17. All conditions precedent to the maintenance of this action have been met.

COUNT I—BREACH OF CONTRACT
GEHRY

18. MIT repeats and realleges each and every allegation in Paragraphs 1-17 as if fully set forth herein.

19. Gehry contracted with MIT to provide design services and drawings in accordance with, *inter alia*, generally accepted standards of professional practice applicable to nationally recognized architectural firms experienced in the design of projects of similar size, scope and complexity in exchange for a payment of a fee. Pursuant to the Architectural Contract, Gehry was to perform all architectural, design and engineering services necessary to complete the Project in accordance with the applicable standard of care.

20. MIT paid Gehry its fee under the Architectural Contract.

21. Gehry, however, failed to provide design services and drawings in accordance with the applicable standard of care.

22. MIT has been damaged thereby.

23. Gehry is liable to MIT for all damages arising from its failure to perform its work in accordance with the requirements of the Contract.

COUNT II – NEGLIGENCE
GEHRY

24. MIT repeats and realleges each and every allegation in Paragraphs 1-23 as if fully set forth herein.

25. Gehry owed MIT a duty to provide design services and drawings reflecting the ordinary and reasonable skill usually exercised by design professionals, engineers and/or architects and as otherwise applicable.

26. Gehry breached its duties by providing deficient design services and drawings.

27. Gehry's deficient design services and drawings caused MIT to incur costs and expenses that MIT would not otherwise have incurred.

28. The costs and expenses suffered by MIT were reasonably foreseeable to Gehry.

29. MIT has been damaged thereby.

COUNT III – BREACH OF CONTRACT
SKANSKA

30. MIT repeats and realleges each and every allegation in Paragraphs 1-17 as if fully set forth herein.

31. Pursuant to the Construction Contract, Skanska was required to perform its work in a good and workmanlike manner and in accordance with the contract plans and specifications.

32. Gehry has claimed that the failure of the Amphitheater is due in whole or in part to the failure of Skanska and its applicable subcontractors to perform the construction work in a good and workmanlike manner and in accordance with the contract requirements.

33. By performing nonconforming work and/or failing to perform its work in a good and workmanlike manner, as claimed by Gehry, Skanska has breached its contract with MIT.

34. As a result of Skanska's breach of contract, MIT has been required to expend additional monies in correcting certain of the nonconforming work.

35. MIT is entitled to recover damages for Skanska's breach of contract in an amount to be determined at trial.

COUNT IV-INDEMNITY
SKANSKA

36. MIT repeats and realleges each and every allegation in Paragraphs 1-17 and 30-35 as if fully set forth herein.

37. The Construction Contract requires Skanska to indemnify MIT from all loss and damages arising out of or relating to the performance of the work and caused by the negligent act or omission of Skanska or any of its subcontractors.

38. Skanska is responsible to MIT for the acts and omissions of Skanska's subcontractors.

39. If, as claimed by Gehry, the failure of the Amphitheater is due in whole or in part to the act or omission of Skanska or its applicable subcontractors, then Skanska must indemnify MIT from all loss or damages resulting therefrom.

WHEREFORE, Plaintiff Massachusetts Institute of Technology hereby requests that this Court:

1. Enter judgment in favor of MIT on its claims for breach of contract and negligence against Gehry and award MIT the damages caused thereby;
2. Enter judgment in favor of MIT on its claims for breach of contract and indemnity against Skanska and award MIT the damages caused thereby; and

3. Award such other and further relief as the Court deems just and equitable.

Respectfully submitted,

**MASSACHUSETTS INSTITUTE OF
TECHNOLOGY**

By its attorneys,



Samuel M. Starr, BBO #477353

Lisa F. Glahn, BBO #648309

MINTZ, LEVIN, COHN, FERRIS

GLOVSKY AND POPEO, P.C.


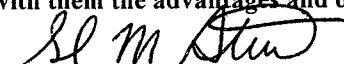
One Financial Center

Boston, Massachusetts 02110

(617) 542-6000

Dated: October 31, 2007

4165640v.1

CIVIL ACTION COVER SHEET	DOCKET NO.(S) B.L.S.	Trial Court of Massachusetts Superior Court Department County: SUFFOLK	
PLAINTIFF(S) MASSACHUSETTS INSTITUTE OF TECHNOLOGY		DEFENDANT(S) FRANK O. GEHRY & ASSOCIATES, INC., N/K/A/ GEHRY PARTNERS, LLP and BEACON SKANSKA CONSTRUCTION COMPANY, N/K/A SKANSKA USA BUILDING, INC.	
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Samuel M. Starr, BBO #477353 Lisa F. Glahn, BBO #648309 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 Telephone: (617) 542-6000		ATTORNEY (if known) Joseph Leighton, Jr., Esquire Wilson Elser Moskowitz Edelman & Dicker, LLP 260 Franklin Street, 14th Floor, Boston, MA 02110 (Counsel for Gehry Partners, LLP) Stanley A. Martin, Esquire Holland & Knight, LLP 10 St. James Avenue, Boston, MA 02116 (Counsel for Skanska USA Building)	
Origin Code Original Complaint			
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)			
CODE NO.	TYPE OF ACTION (Specify)	TRACK	IS THIS A JURY CASE?
BK.1	Design and Construction	(B)	() Yes (X) No
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine eligibility in to The Business Litigation Session.			
<p>Plaintiff proffers that the criteria for admittance into the Business Litigation Session have been met where this action is brought by Massachusetts Institute of Technology in contract and negligence to recover amounts owed by Defendant Frank O. Gehry & Associates, Inc., now known as Gehry Partners, LLP, a design professional and architectural firm, and Defendant Beacon Skanska Construction Company, now known as Skanska USA Building, Inc., a contractor and construction manager, relating to the design and construction of the Ray and Maria Stata Center at MIT in Cambridge, Massachusetts. In this complex, commercial matter Plaintiff alleges that Gehry and Skanska committed design and construction failures on the Project which caused, among other things, masonry cracking, efflorescence and poor drainage at the Project's outdoor amphitheater; efflorescence and mold growth at various locations on the brick exterior vertical elevations; persistent leaks at various locations throughout the building; and sliding ice and snow from the building. MIT has suffered considerable damage, in the form of investigatory, redesign and remedial work, as a result of the Defendants' failures. Moreover, venue is proper because Defendant Skanska has a usual place of business in Boston, Suffolk County, Massachusetts.</p>			
* A Special Tracking Order shall be created by the Presiding Justice of the Business Litigation Session at the Rule 16 Conference.			
PLEASE IDENTIFY, BY CASE NUMBER AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT. NONE.			
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."			
Signature of Attorney of Record 		Date: <u>October 31, 2007</u>	

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
BUSINESS LITIGATION SESSION

07-4779 B. 2-S.

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiff,

v.

FRANK O. GEHRY & ASSOCIATES, INC.,
N/K/A GEHRY PARTNERS, LLP and
BEACON SKANSKA CONSTRUCTION
COMPANY, N/K/A SKANSKA USA
BUILDING, INC.,

Defendants.

CIVIL ACTION NO: _____

10-31-07

Filed & allowed
(van Oort, J)
Attest Helo Joly Sergeant
Asst Clerk

PLAINTIFF'S MOTION FOR APPOINTMENT OF A SPECIAL PROCESS SERVER


Pursuant to Mass.R.Civ.P. 4(c), the Plaintiff hereby moves this Court for an Order appointing Carol Wilkinson of Carol Wilkinson Legal Support Services, 115 Broad Street, Suite 101, Boston, Massachusetts, as special process server in the above-captioned matter. The undersigned swears that to the best of his knowledge and belief, the person to be so appointed is experienced in the service of process, is 18 years of age or over, and is not a party in this case.

WHEREFORE, Plaintiff moves this Court for an Order granting this motion.

Respectfully submitted,

**MASSACHUSETTS INSTITUTE OF
TECHNOLOGY**

By its attorneys,



Samuel M. Starr, BBO #477353
Lisa F. Glahn, BBO #648309
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000

Dated: October 31, 2007

Security enhanced document. See back for details.

MINTZ LEVIN COHN FERRIS GLOVSKY
POPEO P. C. LITIGATION A/C
ONE FINANCIAL CT
BOSTON, MA 02111

10/86

8230

PAY TO THE ORDER OF

Clerk, Suffolk Superior Court
Two hundred twenty five
\$ 275.00
DOLLARS

DATE

10/31/07

53-13/110 M
4/87K

Bank of America



ACH R/T 011000138

DO NOT EXCEED OVER \$500.00

FOR Filing fee 04713-042

S. M. [Signature]

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