

THE REAL DEAL

W Downtown Ruling Could Be Last Word on ILSA Law in NY

August 24, 2011 12:00PM

By David Jones

A U.S. District Court judge ruled against Joseph Moinian's Moinian Group in a closely watched escrow dispute with buyers at the W New York Downtown Hotel and Residences, a decision that lawyers say further establishes the applicability of the Interstate Land Sales Full Disclosure Act in New York condominium sales.



Judge Robert Patterson rejected a motion to dismiss the case by the Moinian Group, which developed the 217-unit hotel and condo at 123 Washington Street, and argued that the federal ILSA law does not apply to condos, but was designed to protect consumers against fraudulent land sales.

ILSA law requires developers of newly constructed condo buildings to file a property report and annual financial statements with the Department of Housing and Urban Development if a building has 100 or more units. The suits allege that Moinian allegedly failed to provide required disclosure forms to buyers, and continued to sell apartments after the agency ordered the developer to temporarily suspend sales at the building in late 2007.

Lawyers for Moinian claimed that the ILSA law was not intended to apply in New York State, because it would overlap with the Martin Act, a state law that regulates the sale of securities, which includes the sale of condos and coops.

"The court is satisfied that the legislative history and HUD's interpretative analysis amply dictate that [ILSA] applies to condominiums," Patterson wrote in his Aug. 22 ruling.

Lawyers for the buyers, led by a New Jersey couple, Giovanni and Jihyun Indomenico, said this new ruling is the most definitive statement from the bench about whether New York condos fall under the jurisdiction of ILSA.

"While almost every prior ILSA decision has assumed that ILSA applies to condominiums, based on the seminal ruling of the 11th Circuit Winter decision [in 1985], this is the first decision in New York that squarely addresses the issue to hold that ILSA definitely does apply to condominiums," said John Desiderio, an attorney at the law firm of **Adam Leitman Bailey**, which represented six of the eight buyers that filed the suit. "The other ILSA decisions in New York [and almost every decision elsewhere] have ruled on other issues of statutory interpretation but not on this precise issue."

Lawyers for Moinian disputed that interpretation.

"The judge's decision only dealt with a single issue that had not been previously decided in New York, the applicability of ILSA to condominiums," said Stuart Saft, Moinian's attorney. "The judge decided to follow a precedent established by a Florida court that we still believe to be incorrect."

Saft said that his client will continue to fight against the rulings and if necessary will file an appeal to the Second Circuit Court of Appeals. **Adam Leitman Bailey** questions how much Moinian's lawyers will be able to challenge the ruling, noting that Saft did not raise any other defenses in the initial case, which was filed in October 2010.

Despite Saft's interpretation, other attorneys note that several federal judges have ruled in favor of ILSA applying to New York condos.

Attorney Lawrence Weiner, who represented buyers in the landmark Fifth on the Park ILSA decision, the first major ruling against a developer in New York since the downturn, said the 123 Washington ruling appears to solidify earlier decisions in both the Southern District and Eastern District of the U.S. District Court, which represent Manhattan and Brooklyn, respectively.

"The developer of 20 Pine Street condominiums made this same argument in a summary judgment motion [Nu Chan vs. 20 Pine] and it was denied," Weiner said. "Similarly the developers of the Toren and the developers of the Residence at Ritz Carlton [in White Plains] made the same argument in motions to dismiss that were denied by the court."