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Ruling Gives Apt. Buyers More Clout in Court

Decision clears way for buyer to sue developer for right to claim breach of fiduciary duty and gross negligence, despite state's Martin Act

By **Amanda Fung**

A court ruling last week in favor of a client claiming breach of contract and fiduciary duties in a securities case is also being seen as good news for condominium and co-op owners seeking damages from developers.

The case involves a state securities law called the Martin Act. The New York Appellate Division ruled that the plaintiff had the right to claim breach of fiduciary duty and gross negligence against J.P. Morgan Chase & Co. because those claims were not preempted by the Martin Act, which allows only the state attorney general to sue defendants on common law claims, such as breach of contract.

Residential real estate attorneys said this ruling is applicable to condo and co-op owners seeking damages from developers who have delivered faulty apartments and buildings, because condominiums and coops both involve types of securities.

"Now owners of condos and co-ops have the right to sue developers privately and don't have to worry or wait for the [attorney general] to pursue their case," said **Adam Leitman Bailey** of the eponymous law firm, which represents both condo owners and developers.

Previously, when condo or co-op owners sued developers under common law fraud statutes, the court could dismiss the case claiming Martin Act preemption, explained Steven Sladkus of the law firm of Wolf Haldenstein Adler Freeman & Herz.

"If they complained to the AG's office that their building was falling apart or the developer breached contract and the AG's office doesn't do anything, condo owners and boards were in a pickle," said Mr. Sladkus, adding that the latest ruling will make it easier for condo owners to seek remedies in court.

Some other real estate attorneys insisted that the ruling will have little impact on residential real estate cases because so few cases have been dismissed under the Martin Act preemption. However, homeowner attorneys said the decision confirms and reinforces their clients' cases against developers. "We celebrate this decision because it clears up any issues," said **Mr. Bailey**.



A court ruling in a case involving JPMorgan Chase clears the way for more apartment buyers to sue developers.