

NY REAL ESTATE RESIDENTIAL | September 23, 2010

Buyer's Remorse Gets Lift

Judge Rules Condo Deals Come Under Federal Law; a 'Game Changer' Decision

By JOSH BARBANEL



Ruling covers condo at the Brompton, at 86th Street and Third Avenue.

A federal judge ordered the developer of an Upper East Side condominium tower to return a \$510,000 deposit plus interest to a Greek shipping executive and his wife, in a sweeping decision that could expand the rights of condo buyers in New York.

The case was the latest and broadest effort yet by the federal courts to take provisions of an obscure federal

law—originally intended to prevent fraud in sales of large tracts of undeveloped land—and apply them to apartment deals in New York.

The ruling could allow hundreds of condo buyers to get deposits back, something many of them would like to do given the decline in apartment values caused by the economic downturn. An appeal is expected.

The case involves the 22-story Brompton, a new brick-and-limestone tower built by large New York developer Related Cos. Related has been tougher than most developers in rebuffing buyers' efforts to get their purchase deposits back or to negotiate deep discounts on their agreed-upon sales prices.

The suit was filed by Vasilis Bacolitsas and his wife, Sofia Nikolaidou, who in May 2008 signed a contract to pay \$3.4 million for a three-bedroom unit in the building at 86th Street and Third Avenue. Later they tried to back away from the deal and get back their deposit.

The office of New York Attorney General Andrew Cuomo had already rejected a claim by the same buyers under state law for the return of the deposit.

But Judge P. Kevin Castel of U.S. District Court in Manhattan, in an opinion Tuesday, found that the standard sales contract given to the couple didn't meet the requirements of the Interstate Land Sales Full Disclosure Act, which was passed by Congress in 1968 to protect land buyers. The decision allows the couple to rescind their sales contract and recover their deposit, even though the decision said they had defaulted on the terms of the agreement.

Since the contract was similar to those used in new condominium developments across New York, lawyers for both developers and buyers said it could potentially wreak havoc with both existing projects and future developments.

"It throws into doubt every contract of sale of condos in New York in buildings of more than a hundred units," says **Adam Leitman Bailey**, a real-estate lawyer who represented the buyers.

Mark Walfish, a lawyer representing Related, said an appeal would be filed. "We believe the decision was incorrect and would effectively give a rescission right to nearly every purchaser of a newly built condominium."

Judge Castel's decision turned on one of the provisions of the Full Disclosure Act which states that a legal description of property being sold must be in a form that can be recorded with county clerks. In his ruling, Judge Castel said that the contract that Mr. Bacolitsas and his wife signed wasn't in a form "acceptable for recording" with the city, because it didn't include notarized signatures of both the buyers and the sellers. As a rule, condo contracts in New York aren't notarized, and many contracts—including those at the Brompton—contain clauses stating that they cannot be recorded.

Stuart M. Saft, a lawyer at Dewey & LeBoeuf who represents many developers but not Related, said that lenders don't permit developers to allow buyers to record contracts, since that could give buyers a claim on a development in the event of a foreclosure "This looks like a real game changer," he said. "It is going to be a huge problem going forward," he said.

There have already been several court decisions in New York cases brought under the Full Disclosure Act. Typically these have involved buildings that argued they were completely exempt from the law, because they sold or marketed fewer than 100 condos. At the Brompton, Related didn't dispute that it was covered by the federal law.

If the judge's ruling is upheld, **Mr. Bailey** said many other buyers who over the past few years had sent letters to developers to return their deposits because of federal law violations would be able to go to federal court seeking to get their deposits back.

Mr. Bacolitsas and his wife agreed to buy the apartment in May 2008. Later, according to court papers, they asked for a \$600,000 price reduction. The developer rejected this.

This past April, the apartment sold to another buyer for just over \$2.8 million, or about \$600,000 less than the couple originally had agreed to pay.