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Condo Buyers In Florida Seek To Exit Deals

**But Courts' Rulings Suggest
Many Investors May Be Stuck;
Defining 'Olympic Style' Pools**

By **MARKUS BALSER**

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With Florida awash in tens of thousands of empty or unfinished condominiums, many investors there are turning to the courts in an effort to cancel their contracts and recoup their deposits.

So far, they haven't had much luck.



Florida East Coast Realty

Two dozen lawsuits against Miami's Opera Tower condo were dismissed by a Florida court in August. still falling.


Condo buyers in hard-hit markets across the country have been scouring their contracts for loopholes and flaws that would allow them to back out. Investors in Florida, where many were looking to flip their condos for a quick profit in a rising market, have been particularly aggressive in using the courts. And that's no surprise, given that the condo market there is one of the worst in the country, with average condo prices down 22% since the market peaked in 2005, according to the Florida Association of Realtors -- and they're

Yet a series of recent legal decisions in the Florida courts indicate that it won't be as easy as buyers might hope to get out of these deals. The bottom line: Unless it's a bona fide contract dispute, an investor's chances of winning appear to be slim.

Last month, the U.S. District Court in Miami dismissed two dozen federal lawsuits in which buyers said they were misled by an advertising brochure promising an "Olympic style" swimming pool at Opera Tower, a high-rise condo building near downtown Miami.

Plaintiffs could not reasonably rely on the drawings or advertisements, Judge Patricia Seitz ruled. The contract clearly stated the pool was L-shaped and 2,530 square feet -- smaller than Olympic size, she wrote. The developers claimed that "Olympic style" didn't refer to

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the pool's size but to the fact that it would have lanes.

The decision was a big loss for consumer rights, says Miami Beach attorney Kent Harrison Robbins, who filed the lawsuits against Opera Tower. "It gives developers wide-ranging room to promise whatever they want, as long as they change it in the written contract," he says. "Honest developers will be outcompeted by dishonest ones." Mr. Robbins says he plans to appeal the decision to the 11th U.S. Circuit Court of Appeals in Atlanta.

Real-estate lawyers nationally are closely monitoring the Florida lawsuits, expecting a wave of similar claims across the country as more condominium projects are completed. "The market in Florida is two years ahead of other parts of the U.S., like California or the Sunbelt states, in both the heavy downturn in prices and the lawsuits following it," says attorney Robert M. Chasnow, a partner with Holland & Knight in Washington.

During the housing boom, Florida -- like some other areas noted for tourism and retirement living -- attracted hordes of speculators. By some estimates, more than half of all the deposits for Miami condos were put down by people planning to flip them for a profit without living in them, says Jack McCabe, chief executive officer of McCabe Research & Consulting in Deerfield Beach, Fla.

A Four-Year Inventory

But developers built far more condos than demand could absorb. The glutted Miami market now has close to 50,000 units -- a record four years' worth of inventory -- for sale or under construction. The national condo market, by contrast, has a 12-month inventory, up from 4.7 months in 2005, according to the National Association of Realtors.

Faced with such sobering prospects, many buyers no longer want to close on their properties, as they risk steep losses when they try to sell. In some buildings, as many as 30% of condo buyers are turning to the courts in an effort to cancel their contracts. If unsuccessful, they have to either go ahead and close on a unit they no longer want or walk away and lose their deposits, which are typically between 10% and 20% of the purchase price.

In one closely watched case, Florida's Fourth District Court of Appeal sided in June with the developers over buyers who were seeking to recover a deposit in the Marina Grande, a two-tower, 26-floor complex that overlooks the Atlantic Ocean in Palm Beach County. The plaintiffs -- two individual investors who operated under the name D&T Properties -- cited a clause in state law that allows buyers to cancel over material changes in the project.

But the court affirmed that the plaintiffs, who paid a \$99,000 deposit for a \$495,000 condo, could not cancel their contract because of rising insurance and utility costs or for minimal increases in other costs. The court said an 18% increase in costs controlled by a developer is not "material," but did not set a standard as to what level of increase would meet that bar. Gary J. Nagel, the attorney for D&T Properties, called the decision "incorrect" and said the court failed to define what a "material" change would be.

In June, a Miami-Dade Circuit Court jury ruled against an investor named Alexandra Hiaeve, who claimed that she never received the condo documents from the owner she was buying a unit from at WCI Communities' One Bal Harbour.

The jury said Ms. Hiaeve couldn't prove that she never received the documents. The judge also ruled during the trial that Ms. Hiaeve had failed to establish that she had requested the condo documents in writing. Thus, the owner, Gedalia Fenster, was allowed to keep the \$300,000 deposit.

A 'Ridiculous' Decision

Robert Zarco, the attorney representing Mr. Fenster, says that denying receipt of the documents is "very common in markets where people had been flipping and then the market turns and they want an excuse not to close." Ms. Hiaeve declined to comment, but her business partner, Yona Kogman, says the jury's decision was "ridiculous" and that Ms. Hiaeve hopes to appeal.

Developers are hailing these decisions. Tibor Hollo, chairman and president of Florida East Coast Realty, which is building Opera Tower, says the rulings indicate that people can't get out of their contracts for insignificant reasons. "Some just don't want to close in a bad market," he says.

But attorneys who represent condo buyers say many of the complaints of contract violations are legitimate -- and that the battle is not over yet. "We are going to see a number of cases where buyers are successful, primarily in areas where something substantial was altered in the project and those that were not delivered on time," says Jared H. Beck of Beck & Lee, a law firm in Miami. "The decisions represent just a tiny sliver of the universe of grounds for buyers' claims in the ongoing litigation war between buyers and developers."

Demanding a Refund

Dora and Umberto Arena, of Hollywood, Fla., are among the thousands of investors who are looking to the courts for relief. When the Arenas bought their deluxe \$595,000 condo in Hallandale Beach, developers urged them to move quickly to put down their \$120,000 deposit. The planned 283 units at the Ocean Marine Yacht Club in Hallandale Beach sold out in only three weeks when they were offered to the public three years ago.

"We saw this beautiful 48-slip marina in their brochures, and it sounded wonderful to have a place for a boat and to live in that brand new building," says Ms. Arena, 64.

Despite the name, the Ocean Marine Yacht Club has no marina, as the developer was unable to secure the necessary permits. "We were inundated with literature touting it as a marquee feature of the complex while the developer was failing to disclose it didn't have the necessary permits or approvals," Ms. Arena says.

The Arenas are suing the developer, Chicago-based Fifield Realty Corp, demanding refund

of their deposit. Representatives of Fifield declined to comment directly on the pending litigation. In a written statement, the company said the litigation "may be based on people trying to get out of their contracts because of current market conditions, including changes in credit and mortgage terms."

Ironically, the growing number of lawsuits may actually make the problem worse. A high rate of units contested in court makes buyers nervous about closing and moving into a half-empty complex, which further depresses the market, says Mr. McCabe, of McCabe Research & Consulting. That, in turn, will give buyers more incentive to sue. "Just wait. We haven't started to see what we are going to see," Mr. McCabe says.

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