

THE LAWYER'S VIEW

The Case Of The Incomplete Condo

By MARK L. HANKIN

IT STARTED AS A STANDARD REQUEST for legal representation from a fledgling board of managers to represent the interest of all unit-owners against the sponsor of the recently constructed condominium association located at 88 Washington Place. The problem: shoddy workmanship and late payments. The unit-owners were experiencing flooding and leaks through windows; electrical system failures; lack of heat in the winter and air conditioning in the summer; lack of furniture in the lobby; and, a failure on the part of the sponsor to pay common charges.

As in most cases, the managing agent who was appointed by the sponsor to operate and manage the premises became conflicted in his loyalty. Our firm's name came to them from the then-managing agent, Taub. We had dealt with cases like this before, and we're dealing with quite a few right now. They're all the same: the sponsors put the buildings up very quickly, put a board in place, put their own managing agent in there, and then walk away from the building. If it's a very prestigious sponsor, that is doing work all over the city on a regular basis, the sponsor will do whatever it takes to make the new residents happy. But if it's a fly-by-night operation, the owners don't care.

We wrote a letter to the sponsor - a partnership of convenience - laying out the issues and describing what had to be fixed. We received two calls, one from the attorney of the sponsor "in control" and another from a second attorney representing the other partner, who disputed that the first caller was calling the shots. It was then that I realized that these two partners were battling each other (I confirmed this later through web research). One guy was promising me "A," the other was promising me "B" and my thought was "combine and conquer." They both wanted my allegiance in some form or manner because they were in litigation, suing each other. They had money coming in from sales and common charges coming in from apartments, but they couldn't do anything with either.

By offering our assistance to each partner in his internal dispute, we were able to obtain concessions to perform emergency work that was needed immediately. Through various court orders, the sponsor was obligated to make some payments of common charges and repairs to the premises.

Then we got lucky.

Although the commercial spaces were retained by the sponsor and did not require unit-owner approval to be sold, the sponsor sought and obtained a proposal from a day-care center to lease the second-floor commercial space. Since it had remained empty for a significant period of time, the sponsor was eager to rent for a large dollar amount.

But for the proposed use, the city required at least two entrances and exits. As the offering plan did not provide the sponsor with an easement and/or license to use both entrances and exits in the premises, the condominium association's consent was required.

We had our bargaining chip. It was this twist of fate that turned the tables in favor of the condominium and resulted in a global agreement to provide for performance of all obligations by the sponsor under the offering plan and for repair and/or reimbursement for common improvements in each unit-owner's apartment.

As a condition to the issuance of a limited use license agreement for the use of the lobby entrance/ exit in the event of an emergency, the sponsor agreed to pay all outstanding common charges; to pay all outstanding bills and/ or invoices from subcontractors involved in the construction of the premises; satisfy all liens against the premises; provide all contracts, subcontracts, warranties, and guarantees related to the construction of the premises; complete all repairs requested by the board;

made cash payment to the board and unit-owners for furniture and improvements promised in the offering plan but never delivered; and, pay the condominium's legal fees. If not for the sponsor's need for a limited use agreement to validate its lease with the nursery school, this settlement may have never come about. However, because of a proactive board, we were able to use the "hook" to bring about a successful resolution. Most sponsors are aware of the attorney general's inability to force compliance with offering plans and attempt to wait until the statute of limitations on their obligations to the property expire. It has been our experience that litigation must be started in order to compel the sponsor to come through. After years of litigation, a settlement is usually reached which only partially resolves the needs of the condominium - and it never includes legal fees.



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