

Weiss Serota Trio Tests New Law In Bulk Condo Sale

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Joshua D. Krut, Michael S. Popok and Joe Hernandez/AM Hoyt

Dealmakers: Attorneys Joseph M. Hernandez, Joshua Krut, Michael Popok

The Deal: The legal team at Weiss Serota Helfman Pastoriza Cole & Boniske arranged the individual sale of 161 condominium units in Seashore Club South Condominium Association in Sunny Isles Beach for total of more than \$75 million.

Details: The attorneys put in 2½ years and litigated several lawsuits, including one against the buyer, to complete the sale of the 1950s-era building. The buyer, RDR Seashore LLC, intends to demolish the building at 18975 Collins Ave. to make way for new development.

The Seashore Club owners had been interested in selling for years but waited until the real estate market appeared to be recovering from the recession. They retained the Weiss Serota firm to effect a sale in January 2012.

The lead bidder was Gilbert Benhamou of Shefaor Development LLC, Hernandez said. Benhamou offered \$82 million and put down a deposit. But prominent luxury developer Gil Dezer had the right of first refusal. Dezer refused to match the price, claimed it was not a genuine offer and the true value was much less. He filed a lawsuit in Miami-Dade Circuit Court, which was settled, Hernandez said.

Benhamou dropped out of contention when Dezer sued. He formed the RDR Seashore joint venture with Rockpoint Group LLC to make the purchase, and a closing appeared imminent.

In compliance with a new law passed by the Legislature to make it easier to sell condominiums, Krut and Hernandez developed a "plan of termination," Michael Popok said.

The structure of the sale was novel, Popok said. No one had tried it in a situation where all of the units were individually owned. Under the new state law, the association needed 80 percent approval but could not have 10 percent of the owners against the sale. The board obtained 92 percent approval.

The seven holdouts forced the attorneys to consolidate seven lawsuits in a second round of litigation. Circuit Judge Beth Bloom, who has since become a federal judge, refused to go along with the plan. She found the law unconstitutional as applied to the deal because it was retroactive. Bloom required 100 percent approval, Popok said.

The association would have to come up with a way to legally circumvent the judge's ruling. The Weiss Serota team proposed Dezer should buy up all of the units from willing sellers to give the buyer control of the association board. He could then amend the condo declaration to lower the threshold for a sale to 80 percent. There was a coordinated closing involving most of the willing sellers during the third week of April. The rest closed during the month of May, according to Miami-Dade County property records.

"The form of contract was pre-negotiated by the board. They all got the same terms," Joshua Krut said.

Popok estimated the average age of the sellers was 75, and a few died during the litigation.

The 170-unit building was in poor shape and would not have passed a safety inspection for its 40-year recertification, Hernandez said.

Originally operated as a motel, Seashore Club became a condo association in 1979, Hernandez said.

The owners received more than \$470,000 each for units rented mostly to vacationers. Standalone units were worth between \$100,000 to \$200,000 each as is.

"The board had a really tough job. For over two years and eight lawsuits, they kept the community together. They really did a lot to help this transaction survive," Hernandez said.

In her final ruling June 27, Bloom granted summary judgment in favor of the condo association, which was by then controlled by Dezer's development group. It was a major setback for the holdouts, Popok said.

The deal was a learning experience, not just for the Weiss Serota team but for condo real estate professionals in general, Hernandez said. A legislative committee is working on revisions to the statute.

Quote: "They took a lot of input from us because of the unique nature of this deal. We took the law for a test drive, and now they are going to try to improve it," Hernandez said.

Background: Hernandez is chair of Weiss Serota's real estate practice group in Coral Gables. He has over 25 years of real estate and corporate law experience. Krut is chair of the firm's community association, club and resort practice group and is based in Fort Lauderdale. Popok is partner in charge of the Miami-Dade office and chair of the strategic development committee.