

DEALMAKERS

To suggest candidates for Dealmakers, contact Cathy Wilson at cwilson@alm.com. Dealmakers should be based in South Florida, but transactions need not involve local companies or properties.

Weiss Serota arranges \$55M Surfside Condo Buyout



MELANIE BEL

Joseph Hernandez and Joshua Krut of Weiss Serota Helfman Cole & Bierman advised Surf House condominium association and its board on how to attract better offers and the best way to structure unit sales.

Dealmakers: Joseph Hernandez and Joshua Krut

The Deal: When a developer sought to buy units at the Surf House condominium in Surfside, the attorneys with Weiss Serota Helfman Cole & Bierman advised the condominium association and its board on how to attract better offers and the best way to structure unit sales.

JMH Development emerged with the best offer of \$55 million for the building, and the sales of 31 units closed on Oct. 30. Sales of the final five units are under negotiation. The average sales price is just over \$1.5 million per unit — about four times their average market value.

Details: New York-based JMH plans to tear down the 49-year-old Surf House and build a 12-story luxury condo on the waterfront site at 8995 Collins Ave.

With vacant waterfront property all but nonexistent in South Florida, developers are paying premiums to snap up older buildings on property they plan to redevelop.

Surf House condo owners were well aware of this trend. Right next door, the historic Surf Club and nearby Surf Club Apartments Cooperative were acquired by Miami-based Fort Capital Management in 2012 and 2013 for a total of \$152 million. Fort Capital is

building a 151-unit condominium and 77-room Four Seasons hotel, plus space for retail shops and restaurants, on the properties.

The sale of Surf Club, one of Miami's most elite social clubs, turned members against each other and spawned lawsuits and countersuits, although the legal sparring did not derail the developer's plans.

Fort Capital eventually turned its attention to Surf House. Five owners of six units signed contracts to sell, putting the condo's board of directors in a difficult position, Joseph Hernandez said.

Many owners didn't want to get in bed with Fort Capital without seeing if they could get a better offer from another developer, he said.

The board of directors approached Hernandez and Joshua Krut for advice, and then tried to go it alone for a while. Realizing they needed formal help, they engaged the attorneys at the end of March.

"We also represent developers," Hernandez said. "That gives us a perspective on both sides of the transaction. We can help our owners think through the transaction like a developer.

"Very seldom do owners have the negotiating skills to deal with a billionaire developer," he said. "That is where we try to help."

Hernandez and Krut have been down this road before. In one notable case, they arranged the sale of 161 condo units in Seashore Club South in Sunny Isles Beach for \$75 million in 2014. This highly complicated deal consumed two years and the litigation it spawned revealed problems with state law.

In Surf House's case, the attorneys advised the owners to stick together and not litigate against each other.

"We try to preach to them if you act as a unified community, you will be much better off," Hernandez said. "If you get fractured, you have lost your ability to do that."

The attorneys advised against a termination of condominium. Under state condo law, 80 percent of owners must approve, and not more than 10 percent dissent, to approve a plan of termination. The problem with this approach, which includes an appeal period and the possibility of lawsuits, is that a dissenting minority of owners can hold the deal hostage, Hernandez said.

"We knew there as a minority that would refuse the deal," he said. "It had much less likelihood of getting to closing."

Instead, they advised the sales by each owner be structured as individual contracts.

They launched the process of attracting qualified buyers by suggesting the board hire a broker. The board chose the Avison Young commercial real estate services firm.

They also advised the board to reject the owners' contracts with Fort Capital. Two unit owners sued.

By then, JMH Development and two other potential buyers had expressed interest.

JMH's offer "signaled the buyer was for real," Hernandez said. "It gave a lot of unit owners confidence it would happen. That created a watershed. Once that happened, the suit was quickly dropped."

One offer came in at \$50 million and another contained terms that were too stringent.

Fort Capital's final written offer was for \$48 million. "Ultimately, they made

the decision to reject the contract Fort Capital had," Hernandez said. "That ended up being for the best. They got the best price."

The sale includes a small parcel on the west side of Collins Avenue that is being used as a parking lot and could be developed.

All the closings took place on the same day. Owners have six months to move out and no longer have to pay monthly maintenance fees.

Comment: "Without a smart, tough board, the owners will lose out big time," Joshua Krut said. "These people made the hard decisions and worked very hard to make this happen."

Background: Hernandez, who chairs the firm's real estate practice group, advised the Surf House board of directors on transactional aspects of the unit sales. Krut, chair of the firm's community association, club and resort practice group, acted as general counsel for the association and advised the board on condo law issues.

— Mary Hladky