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May a sponsor intentionally delay a condo unit closing?

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So the answer in this court's opinion is, yes, a sponsor may be liable for damages for an intentional breach of contract by failing to diligently pursue completion and closing of a unit although damages may be limited.

A recent New York Supreme Court opinion tackled a unique claim by a purchaser of a residential condominium unit - may a purchaser obtain damages for an alleged intentional delay in completing his unit? Most sponsors, of course, want to close quickly but this purchaser alleged that his seller did not have a construction loan to pay down and was unhappy with the price set forth in the original purchase agreement. After much back and forth, the seller ultimately closed and the purchaser sued for damages post-closing. The original press reports about the decision played up the plaintiff's status as a partner in a major New York law firm leading to the typical "only a lawyer…" thought. However upon reading the thoughtful and unusually detailed court decision in Hurley v. Watanabe, the dispute raises an interesting issue - may a sponsor intentionally delay completion of a project to try to force a buyer to exercise a right to terminate the now below market contract? The court held that the plaintiff has the right to try to prove his case with respect to certain damages.

The plaintiff signed the contract in December of 2012 when the unit was virtually complete. The sales agents advised that the unit was "basically finished" and that a temporary certificate of occupancy was "imminent" permitting a closing "very soon," perhaps as early as January of 2013. However, evidence showed that work had slowed. The sponsor quickly advised that construction was a "few weeks behind" and predicting a mid February 2013 closing. With no closing by April of 2013, the purchaser started writing complaint letters. The TCO was ultimately issued September 6, 2013 and the sale closed October 16, 2013. But in the meantime the purchaser's interest rate on his financing had increased causing plaintiff to sue for damages including those arising due to the higher rate and for interim living costs. During this period the sponsor had offered to let the purchaser rescind his contract. The offering plan for the building estimated a closing on or about July 1, 2012 but various disclosures in the plan warned of the possibility of delay, although the plan required the sponsor to proceed "diligently and expeditiously to complete construction."

The sponsor moved for dismissal of the complaint. Procedurally the court had to assume that the allegations that the sponsor intentionally delayed the closing were true. The court issued a split decision knocking out the claims relating to the increase in the purchaser's interest rate in part due to various plan disclaimers relating to the potential increase in the cost of mortgage financing. The court, however, let survive the purchaser's claim for additional living costs, assuming the plaintiff could prove an intentional delay. The rest of the complaint was dismissed. So the answer in this court's opinion is, yes, a sponsor may be liable for damages for an intentional breach of contract by failing to diligently pursue completion and closing of a unit although damages may be limited.

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