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DAILY BUSINESS REVIEW

PRACTICE FOCUS / REAL ESTATE

Supreme Court ruling benefits condo developers

Commentary by Jason R. Block

A significant decision from the Florida Supreme Court issued in January will have a meaningful impact in reducing the numerous and often highly technical lawsuits filed by preconstruction condominium buyers.



Block

The decision essentially shut the door on hundreds of lawsuits—and opened the door for developers to more confidently build and complete projects in today's recovering market.

The opinion overturned a lower court ruling on preconstruction condominium escrow accounting requirements. In overturning the ruling, the Florida Supreme Court affirmed the trial court's dismissal of the original claims.

The decision was an important win for developers statewide—and a rebuke of prospective buyers looking for innovative ways to back out of their signed contracts.

Technically, the decision resolved two consolidated cases filed by preconstruction buyers

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against North Carillon LLC, which developed Canyon Ranch Living in Miami Beach.

In both cases, which were filed after the housing market crash, the buyers sought to rescind their preconstruction contracts to purchase condominium units for more than \$1 million each by claiming that preconstruction deposits paid up to 10 percent and in excess of 10 percent of each contract's purchase price were unlawfully maintained in a single escrow bank account. The buyers wanted to recover the deposits paid by arguing that under state law, the deposits should have been held in two separate escrow bank accounts.

Under Florida law, condo buyers' deposits of up to 10 percent are fully protected, while funds in excess of the 10 percent can be accessed by the developer for the construction and development of the condominium. As an additional protective measure, a violation of the state statute that governs the use of deposits is punishable as a third-degree felony.

The argument that Raoul

Cantero and I put forth, as developer's counsel, claimed the deposit money can be held in one escrow account. In a 6-1 decision in favor of the developer, the Florida Supreme Court was persuaded that Florida law does not require maintenance of separate escrow bank accounts for deposits up to 10 percent and those in excess.

PRACTICAL EFFECT

In its opinion, the majority stated the issue as being "whether a developer may maintain the two different types of deposits in a single escrow account, as North Carillon contends, or must place them in separate escrow accounts, as the buyers argue," and concluded, "The buyers' claims against North Carillon for the maintenance of deposits in a single escrow account ... were properly dismissed by the trial court."



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In practical terms, the ruling was significant for a number of reasons. For the first time, and underscoring the historic nature of its opinion, the Florida



J. ALBERT DIAZ

Raoul Cantero teamed with Jason R. Block as developer's counsel and argued that condo deposit money can be held in one escrow account.

Supreme Court applied the rule of lenity in a civil case since the court agreed with the developer's counsel by finding the statutory text to be ambiguous.

Lenity is a doctrine of statutory interpretation requiring an ambiguously worded statute imposing both civil and criminal penalties be construed in favor of a defendant in a civil case concerning the same statute.

By applying the rule of lenity, the court avoided the possible pursuit of criminal charges against developers that did not maintain separate escrow accounts, which had been suggested by prior decisions.

Industry followers believe this case could affect hundreds

of similarly situated Florida buyers who filed nearly identical lawsuits throughout the state seeking to recover hundreds of millions of dollars in deposits following the housing meltdown.

In a recovering market where development is progressing and fears of real estate busts are fading, the ruling leaves developers optimistic.

Across South Florida and key condominium markets, developers are responding to market demand and launching new projects.

This ruling provides better guidance to developers which continue to undertake the risks in developing projects. Developers will be less concerned about buyers becoming spooked by market conditions—and attempting to back out of their agreements without cause.

In the end, the Florida Supreme Court's ruling benefits developers, the continuing economic recovery, and the region's return to robust, healthy growth.

Jason R. Block is a partner with Rennert Vogel Mandler & Rodriguez in Miami. He helped represent the developer in the case decided by the Florida Supreme Court.

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The Florida Supreme Court decision was an important win for developers statewide—and a rebuke to prospective buyers looking for innovative ways to back out of their signed contracts, writes Miami attorney Jason R. Block. **A8**