

10/6/2019

BUSINESS CASE FOR ACCEPTING THE NEGOTIATED SETTLEMENT ON THE DEVELOPER LAW SUIT

Why Did The Board Agree to Settle Instead of Proceeding to Trial?

The negotiated \$435,000 settlement will result in a net cash inflow to the Association of approximately \$360,000, after subtracting our law firm's non-labor expenses and their contracted contingency percentage of the award, and will allow us and our lawyer to now focus our attention on resolving our insurance claim with Lloyds of London. That claim is scheduled to go before an arbitration panel in mid-2020 (hearings to take place in New York).

We have spent approximately \$130,000 in legal fees to get to this point. The \$360,000 net cash inflow from this settlement is almost a 3:1 payback on our out of pocket investment to date.

The Board believes that it is unlikely that we will achieve a similar payback on the additional investment of Association funds that would be needed to take the developer case to trial. If we were successful at trial and achieved a court-ordered settlement, we would need to spend more money on what might prove to be a very difficult effort to collect on that settlement. There is a risk that we could receive no payback at all on that additional investment. These are the numbers that we factored into our business case:

1. Estimated additional association legal costs if we go forward to trial
 - a. Estimate \$150,000 to \$200,000 in additional legal fees and expenses to go from where we are to the completion of a trial in August of 2020
 - b. Likely additional legal fees (can't estimate now) to recover the funds awarded in any court ordered settlement
2. Risks to the association if we lose at trial:
 - a. Would need to pay legal fees if the plaintiffs if we lose – estimate of \$200,000 to \$300,000

Information describing the significant challenges that the Association would have faced if we had chosen to take this case to trial is outlined in the attached October 4, 2019 letter from our attorney, Salvatore Scro, to David J. Maldoff, who is an attorney involved in the upcoming arbitration proceedings with the Association's 2016 property insurance carrier, Lloyds of London.

October 4, 2019

Via: Email (dmaldoff@butler.legal) and Regular Mail

David J. Maldoff, Esq.
Butler Weihmuller Katz Craig, LLP
400 North Ashley Drive
Suite 2300
Tampa, FL 33602

Re: Vintage Grand Condominium Association, Inc. v. Fortune Capital Partners, Inc., et al.
Case No.: 2015-CA-6844 NC

David:

This letter is in follow-up to our telephone conversation of October 2, 2019. As you are aware, the Association had brought a Circuit Court Action for breach of Florida statutory warranty (F.S. §718.618(6)) claim against the successor developers and for breach of fiduciary duty claims against the developer-appointed directors. This matter has been set for trial next year. However, the parties have reached a global settlement of the matter for \$435,000. The basis for the Association agreeing to this settlement includes the following:

- a) The original developer was not brought into the suit, as it was a defunct company;
- b) The successor developer became such by purchasing 192 of the remaining units;
- c) This company has no assets to our knowledge;
- d) The remaining parties the Association has sued as successor conversion developers are brought as such under a piercing of the corporate veil theory;
- e) The claims against the developer appointed directors for breach of fiduciary duty involve some directors appointed by the original developer and others by the successor developer.

In order to succeed on these claims, the Association would have to complete discovery to support its allegations that the directors derived an improper personal benefit or committed an act or omission in bad faith, under the Florida Statute Section 617.0834. If the Association were to recover, possibility of collecting on any judgment is questionable. There is also the risk of recovery against some and claims denied against others, which could result in liability for court costs and legal fees.

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David J. Maldoff, Esq.
October 4, 2019
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All insurance carriers for the defendants have denied coverage but have defended under a reservation of rights. Basically, the settlement is what they would consider a high-end of their potential exposure in defense costs. Our clients felt it prudent to settle rather than risk incurring additional costs without guaranty of recovery.

Ultimately, the risk of trying the case and the expense for the same would be the first hurdle. In the event of a favorable verdict and judgment, the Association would then need to seek avenues to collect on the judgement. Collection against the successor developer may be futile. By settling, there is a guaranty of funds, which we agree may be set-off against any award in the arbitration.

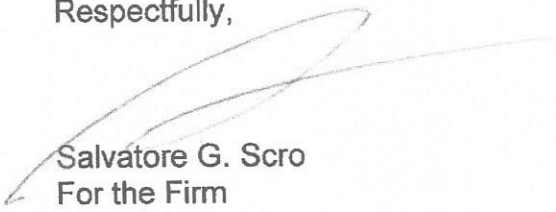
For the foregoing reasons, we request that the insurers of the Association consent to the settlement of the warranty and related claims in the Circuit Court Action and waive their subrogation rights.

Please let me know if this is agreeable to the carriers, so we can wrap up the Circuit Court Action.

If you have any questions, please contact me.

Thank you.

Respectfully,



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