

# **BACKGROUND INFORMATION ABOUT THE VINTAGE GRAND DEVELOPER LAWSUIT AND THE BUILDING REMEDIATION PROJECT**

## **Summary of the “Developer Lawsuit”**

This lawsuit was initiated by the Vintage Grand Condominium Association (abbreviated name “the Association”) to address allegations of construction defects and deficiencies regarding the buildings in our Condominium complex. We are currently engaged in a \$16 million building remediation project to fix those defects and deficiencies and to also make the buildings compliant with current building codes

We have asserted claims against Fortune Capital Partners, Inc. (abbreviated name “FCP”) and their subsidiary limited liability company named Vintage Grand Associates, LLC (abbreviated name “VGA”) that was the official “successor developer” of the condominium, for a “breach of implied warranty” as defined in Fla. Stat. §718.618(6).

We have also asserted an individual breach of warranty claim against a person named Miguel Poyastro, who was an owner and principal of FCP, an officer of VGC and also an officer and board member of the Vintage Grand Condominium Association when control of the association was transferred to owners in late 2014. We are pursuing that individual claim against him through a “piercing of the corporate veil” analysis and assertion.

We have also asserted claims against a group of people who have been termed “the developer-appointed directors” of the Condominium association for “breach of fiduciary duties” regarding their actions when they served in that role. Mr. Poyastro is included in that group.

All defendants have denied our allegations. All have also denied that they had any knowledge of the construction defects and deficiencies while they were officers of FCP or VGA and/or served as developer-appointed board directors of the Condominium association.

## **Key Events and Timeline of the Lawsuit:**

1. The Condominium was an existing apartment complex that was constructed in 1989 and subsequently converted to a Condominium through the recording of a Declaration of Condominium in Sarasota County, Florida by the original converter developer, Sarasota 432, LLC (abbreviated name “Sarasota 432”), on December 27, 2005.
2. A licensed professional engineer named Eduardo Vazquez was hired by Sarasota 432 to perform an inspection of the Condominium buildings and prepared a conversion inspection report. Among other observations, that report stated that *“The structure has the appearance of being structurally and functionally sound with no apparent cracks or repairs needed. The remaining useful life expectancy of the structure is 45 years from this inspection. The replacement cost of the structural shell only is approximately \$10,199,600.00.” [as of December, 2005]*

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3. From late 2005 through early 2009, Sarasota 432 sold 235 units of the 432 units in the Condominium, but they decided that they did not want to continue as the converter developer for Vintage Grand
4. Fortune Capital Partners (FCP) contracted to purchase the remaining 197 units of the Condominium, but never took title. Instead, FCP assigned its purchase contract to its subsidiary LLC, Vintage Grand Associates (VGA). FCP never became a “successor conversion developer” as defined in Florida statutes at that time.
5. Title to the 197 condominium units was transferred from Sarasota 432, LLC to VGA on June 29, 2009. At that point, VGA became a successor conversion developer.
6. On August 17, 2009, Eduardo Vazquez performed an inspection of the Condominium buildings and prepared a conversion inspection report, dated February 10, 2010. *That report was required by Florida regulation to document the turnover of the condominium association from Sarasota 432 to VGA. It was prepared by the same engineer that produced the above referenced turnover report in December of 2005. That report stated that the estimated replacement cost of the structural shell was still \$10,199,600 and that it had a remaining life expectancy of 41 years.*
7. By late 2013, VGA had sold a sufficient number of units to require that the Association be turned over from a developer-controlled board to a board that was elected and controlled by owners, as governed by Florida regulations.
8. A meeting to turn over control of the Condominium Association to the owners took place on December 19, 2013. A turnover process was completed at that meeting but, due to irregularities in the election of the owner board of directors that participated in the meeting (illegal ballots were submitted by FCP and/or or VGA officers), the election results were challenged by a group of Vintage Grand owners lead by Bill Wild and Florida regulators ultimately declared the election to be invalid. A new election was held resulting in the establishment of our first legitimate owner-controlled board of directors lead by Bill Wild. Due to those irregularities, the official turnover of the Association to owners was not formally recognized by the State of Florida until December 28, 2014. *This was very beneficial to us because it gave the owner board an additional year (through the end of 2015) to evaluate the condition of the buildings and potentially file claims against the defendants within the statutorily defined warranty period..*
9. FCP and VGA hired Blue Ray Engineering to perform an inspection of the Condominium buildings and improvements. They prepared a report, dated March 26, 2014, to serve as a turnover inspection report pursuant to Florida Statutes, Chapter 718. The licensed professional engineer who oversaw the inspection and subsequent preparation of Blue Ray’s conversion report was named Jason Dehler. *In Appendix B of their report, Blue Ray Engineering provided a table which enumerated the estimated remaining life of all common elements of the Condominium as of that time,*

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*the estimated replacement costs of all common elements as of that time, and the projected replacement costs for those common elements at the end of their life span. The table indicated that the structural components of the buildings that Blue Ray had inventoried had 0 years of estimated remaining life and that the estimated 2014 replacement costs for the inventoried structural components that specifically relate to the 28 residential buildings totaled to \$1,150,683. However, Blue Ray's inventory as summarized on that table was grossly deficient in that it did not include key structural components such as the wood framing behind the stucco, the cedar trim around the windows, the balcony floors, the balcony support structures, the breezeway arches, the floor joist trusses and the attic trusses. Also, the report did not make any recommendations with regards to what steps should be taken to replace or remediate the inventoried structural components that were already at the end of their estimated life span.*

10. The new, legitimate owner-controlled board lead by Bill Wild immediately became aware of problems with leaky windows and rotting of the cedar trim around the windows, which the developer's property manager had been addressing through a maintenance/repair contract. The volume and costs of needed repairs was escalating.
11. In May of 2015, the new owner board contracted with Delta Engineering to conduct a "Preliminary Condition Assessment" of one building (Building 19), to assess the condition of all building structural components and the windows by performing visual observations of the building exterior and using moisture meters, thermographic imaging and limited destructive investigations (cutting holes in the stucco to be able to observe the structural components that were hidden by the stucco cladding) to assess the extent of water and insect damage in wood frame components behind the stucco. That report was completed in the fall 2015 and a summary of the results of the investigation was presented at the Association's Annual Membership Meeting in January of 2016. *Delta Engineering's presentation stated that building 19's stucco cladding and trim needed to be repaired or replaced, in whole or in part, to properly address observed deficiencies in those components and to identify and properly address hidden wood frame damage behind the stucco that has occurred as a result of water accumulating and remaining behind the stucco over a long period of time.*
12. Based on the findings of Delta Engineering's Preliminary Condition Assessment of Building 19, the Association initiated legal proceedings against the FCP, VGA and the developer-appointed board directors by filing a complaint with the Circuit Court of the 12<sup>th</sup> Judicial Circuit Court District of and for Sarasota County in late 2015. That complaint was amended in November of 2016.
13. From 2016 through early 2018, Association representatives worked closely with legal counsel in planning the legal strategy for this case, assembling documentation and completing depositions of several witnesses, including Bill Wild. In parallel, Association representatives and legal counsel were also pursuing litigation on a

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damage claim that we had filed against the Association's 2016 property insurance carrier, Lloyds of London (still in progress).

14. In early 2019, the 12<sup>th</sup> District Circuit Court ordered that legal counsel for all parties involved in the "developer lawsuit" participate in a "case management conference". That conference laid out the timeline for the pre-trial discovery work and remaining depositions and established October 14, 2019 as the scheduled trial date.
15. In March of 2019, legal counsel for the opposing parties proposed to the Association that a mediated settlement be attempted to potentially avoid having to go to trial. The Association agreed to do so.
16. The Mediation Session was conducted with a neutral facilitator on May 2-3, 2019. It did not produce a settlement.
17. Since the mediation session, legal counsel for the various parties have been conversing with each other and with their clients to try to negotiate a settlement that would be acceptable to all parties. Through mid-September, several rounds of offers and counteroffers had been exchanged and it appeared that the parties might be able to achieve a satisfactory resolution. However, since the scheduled October, 14 2019 trial date was rapidly approaching, the Association's lawyer took steps to schedule depositions of several key witnesses, including Jason Dehler of Blue Ray Engineering.
18. After experiencing considerable difficulties in scheduling the depositions, and the cancellation of several scheduled depositions due to the approach of Hurricane Dorian, the three parties conferred and agreed to jointly petition the judge of the 12<sup>th</sup> District Circuit Court for a trial Continuance. That judge approved the Continuance, pushing the case back to the August 24, 2020 trial calendar.
19. Meanwhile, the Association's lawyer continued to work on scheduling depositions and was preparing to depose Jason Dehler of Blue Ray Engineering on Wednesday, October 2, 2019.
20. On Monday, September 30 and Tuesday, October 1, 2019, the Association's lawyer continued his discussions with opposing legal counsel, pushing for a higher total settlement offer. He was successful in getting their offer over the threshold value that the board's negotiation team (Dave Carter, Joe Gianino and Joe Joseph) had previously decided that the association should accept. (That team was given the authority to negotiate on behalf of the Board at a closed legal board meeting in March of 2019). On the afternoon of October 1, after a 90 minute discussion with the Association's lawyer reviewing all aspects of the case and the costs, potential benefits and risks of proceeding to a jury trial, Dave Carter decided, on behalf of the Board, to accept an offer of \$435,000 to settle all of the Association's claims. The Association's

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lawyer is currently working with the legal counsel of the opposing parties to finalize a written settlement agreement that all parties will sign within the next several days.

21. If we had not been able to reach this settlement agreement, we would now be going “full speed ahead” on our preparations for an August 24, 2020 trial by scheduling and completing several depositions in October.

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## **Key Events and Timelines for the Remediation Project**

1. In May of 2015, the Vintage Grand Condominium Association Board contracted with Delta Engineering to conduct a “Preliminary Condition Assessment” of one building (Building 19), to assess the condition of all building structural components and the windows by performing visual observations of the building exterior and using moisture meters, thermographic imaging and limited destructive investigations (cutting holes in the stucco to be able to observe the structural components that were hidden by the stucco cladding) to assess the extent of water and insect damage in wood frame components behind the stucco. That report was completed in the fall of 2015 and the results were shared with owners in January of 2016. *The report concluded that building 19’s stucco cladding and trim needed to be repaired or replaced, in whole or in part, to properly address observed deficiencies in those components and to identify and properly address hidden wood frame damage behind the stucco that has occurred as a result of water accumulating and remaining behind the stucco over a long period of time.*
2. Based on the findings of the Preliminary Condition Assessment, the owner board directed Delta Engineering to prepare specifications (a “Project Manual”) for a comprehensive remediation plan for the buildings that would address all known and suspected structural deficiencies in all of the buildings in the complex and also bring them into full compliance with current building code requirements for wind resistance. In addition, Delta Engineering was directed to assist the Association in obtaining competitive bids from construction contractors to perform the needed remediation work
3. A competitive bidding process was completed by April of 2016, resulting in a tentative decision by the owner board to award a \$12 million, two and ½ year construction contract to one of the bidders (Elias Brothers), subject to Association member approval of a loan package that was being negotiated to finance the contract.
4. The owner board submitted the \$12 million, two and ½ year remediation plan and a supporting financing plan to Association members for their approval at a Special Members meeting on June 23, 2016. The proposed financing plan involved a \$3 million Special Assessment to be paid by owners within the next six (6) months and a \$9 million construction loan to be paid off over 12 years starting in 2017. That plan did not receive sufficient “yes” votes to pass (2/3 of a quorum was required and the total votes in favor of the plan fell far short of that threshold).
5. The owner board then contracted with Delta Engineering to perform examinations and destructive testing on fifteen (15) additional randomly selected buildings to verify that the damage that they had documented during the assessment of building 19 was representative of the condition of all of the 28 residential buildings in the complex. Delta Engineering submitted its report on this study on October 28, 2016. *The report*

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*concluded that all 15 of the additional buildings that were examined had “hidden wood frame damage .... that has resulted in a material and substantial structural impairment of the buildings or parts thereof ....”*

6. As a part the association’s operating budget for 2017, the owner board established a \$2 million annual “contingency fund” assessment to allow the remediation project to go forward on a reduced scale. Through this method, the board was able to start the project without having to obtain membership approval for that action. At that time, it was projected that \$2 million would be enough to remediate 4-5 buildings in 2017.
7. Sarasota County tagged the buildings in late November of 2016, stating that the buildings could be condemned unless the Association promptly developed and started the implementation of a comprehensive repair plan.
8. After Sarasota County tagged the buildings, the Association quickly negotiated a contract with Elias Brothers for the remediation of five (5) buildings, to start as soon as possible.
9. In response to Sarasota County’s concerns about the safety of the buildings’ balconies and breezeway arches, the Association also promptly commissioned a program to inspect all balcony support structures and breezeway arches throughout the complex. Delta Engineering did the inspection work with the assistance of Elias Brothers. All balconies that were determined to have structural deficiencies were closed through the installation of barriers across the sliding glass doors. A project was then initiated to install temporary shoring following Delta Engineering’s specifications. Delta Engineering then re-inspected all of the shored locations to ensure that the temporary shoring had been installed properly and to determine which of the balconies that had been shored were safe to occupy. Most of the shored balconies were deemed to be safe to occupy and were eventually reopened. However, there were several balconies spread throughout the complex had other structural issues that could not be resolved by temporary shoring alone. Overall, this balcony review program extended from December of 2016 to March of 2018 and was conducted in parallel with the five building Elias Brothers remediation project.
10. At the January,2017 annual membership meeting, owners were asked to vote on two measures that were designed to facilitate efficient and cost-effective execution of the scaled down project:
  - a. Allowing the board to temporarily borrow from capital reserves to effectively manage the month to month cash flows on the project, and
  - b. Transferring ownership of the windows from the individual owners to the association so that window replacement could be included in the remediation project.

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- In addition, owners were asked to vote on a measure that authorized the association to negotiate a new construction loan package that would enable the association to accelerate completion of the remaining 23 buildings after the first 5 buildings had been completed. All of the above measures were approved by owners at that meeting.
11. The five building Elias Brothers remediation project was started in late February of 2017. As of the end of 2017, a total of \$2 million in contingency fund dollars had been spent and a total of five buildings had been started but none of those had been completed. The final completion steps for the five buildings stretched into June of 2018. The final price tag for the five remediated buildings plus the above referenced temporary shoring of defective balconies and breezeways throughout the complex. was \$2.7 million. *(The Board's subsequent analysis of the spending breakdown concluded that something less than 4 buildings could be completed per year going forward if the annual Contingency Fund assessment was continued at \$2 million per year. After factoring in the impact of inflation over a total construction schedule of approximately seven additional years, the Board projected that the total price tag for 28 buildings would be in the vicinity of \$16 million. This is the ballpark figure that the Board has been using in its long-range planning).*
  12. While the first five buildings were being remediated, Delta Engineering completed a study of attic roof trusses throughout the complex and furnished its study report in September of 2017. They found numerous serious structural deficiencies that required attention. Specifications to address those deficiencies were developed and rolled into the bid package for the next phase of work to be contracted after the first 5 buildings had been completed
  13. The Association worked with Stonegate Bank (now Centennial Bank) throughout 2017, attempting to negotiate a loan package to support accelerated completion of the remaining 23 buildings. However, in December of 2017, Centennial sent the Association a letter saying that they would not be able to offer a loan at that time due to underwriting concerns about the high percentage of rental units in the complex, the limited amount of equity that the association had put into the project to that point, and the high HOA payments that owners were being required to pay
  14. Following a second round of competitive bidding conducted in the fall of 2017, R.L. James was selected to be our contractor for a second phase of construction which was eventually scoped out to be a 2 and ½ year contract (from mid-2018 though the end of 2020) to fully remediate 9 additional buildings including attic repairs, complete attic repairs in the first 5 buildings that had been remediated by Elias Brothers, and make permanent repairs to the support structures for a total of three (3) balconies in buildings which were not scheduled to be remediated before 2021.
  15. R.L. James started their work in August of 2018. Their initial progress was slow, but over the past eight months they have accelerated their activity to the point that they

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are now slightly ahead of their contractual commitments. They are now on track to complete all work in their contract by September 30, 2020, three months ahead of their contractual commitment. At that point, the Association will require a new contract to remediate the remaining 14 buildings.

16. The Board now projects that the remaining 14 buildings can be completed by the end of 2024 if the \$2 million annual Contingency Fund assessment is continued and no other significant sources of project financing materialize (e.g., large proceeds from legal proceedings or from a construction loan).