

Vizcayne Condo Associations Sue Over Construction Costs

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October 13, 2014



Vizcayne condo tower, at 253 NE 2nd St. J. Albert Diaz

Two condo associations at two Miami high-rises that fell victim to the housing crash are refusing to cover the tab for construction costs at the luxury project after it was sold in bankruptcy.

Associations for the north and south towers at Miami's Vizcayne condos are suing for control of the towers, claiming the company that completed construction misused funds and assigned its expenses as a loan to the associations.

The Vizcayne South and Vizcayne North associations filed suit late Friday in Miami-Dade Circuit Court against owners RW 244 Biscayne Res LLC and RW 244 Biscayne RET LLC, real estate finance executives Shane Hillsley and Thomas W. Duncan of Duncan Hillsley Capital LLC, the master association and the Vizcayne Commercial Condominium Association, which controls a commercial lot on the property.

They say instead of absorbing construction costs, the developer charged them for the expense, assigning a multimillion-dollar tab as a loan with interest to the association.

"It's about unit owners getting stuck with what the hedge fund should have paid," **said David Haber, an attorney representing the north and south condo associations.** "They made a lot of money on the sale of the units, but they didn't have the right to stick it to the unit owners. It's about greed."

The lawsuit seeks an emergency injunction, damages and control of the master association.

The action stems from the RW companies' takeover of the Vizcayne towers in 2010 from embattled developer Cabi Downtown LLC. Cabi was the U.S. subsidiary of GICSA, one of the largest developers in Mexico. The company worked on the towers, then called Everglades on the

Bay, from 2007 to 2010 and filed for bankruptcy protection without completing the project. It was one of the biggest real estate collapses of the housing bust in South Florida.

The development at 253 NE Second St. includes 409 units in the north tower, 440 in the south tower and 58,000 square feet of retail space. Condo prices range from about \$240,000 to \$2.5 million.

After Cabi's collapse, RW, affiliates of New York-based private equity firm Rockwood Capital LLC, acquired the incomplete project from Cabi's primary lender, Bank of America Corp. Rockwood took over the unsold inventory through a bulk transfer and spent about \$3.5 million to complete construction and deliver the project.

The RW companies are likely to argue that they'll bulk assignees, not successor developers, which would offer them some protections and exemptions under the law, **said attorney Jonathan S. Goldstein, who represents the plaintiffs.**

"In any case, they don't have the right to create loans," **Haber said.** "Their own directors that they appointed approved the loan to them. The directors had a self-interest."

The associations say the construction costs were necessary if RW intended to continue marketing the struggling project but say they want no part of the bill.

"Essentially, while RW acquired developer's rights and interests, RW attempted to avoid/assume any of the developer's responsibilities or obligations," the suit alleges. "Instead of paying such successor construction expenses outright on its own account, RW has attempted to treat [them] as the associations' common expenses."

The groups also charge the developers with illegally holding onto control of the master association. Florida law permits condo developers to appoint association board members but requires them to turn over control three years after half of the units are sold or three months after 90 percent have traded.

The associations claim they're still waiting to take control even though the property sold out in 2013.

"Regardless of whether they're a bulk assignee or not, they can't control the master," **Haber said.** "And that's what they're trying to do."

Rockwood spokeswoman Caroline Luz of Owen Blinksilver Public Relations declined comment.