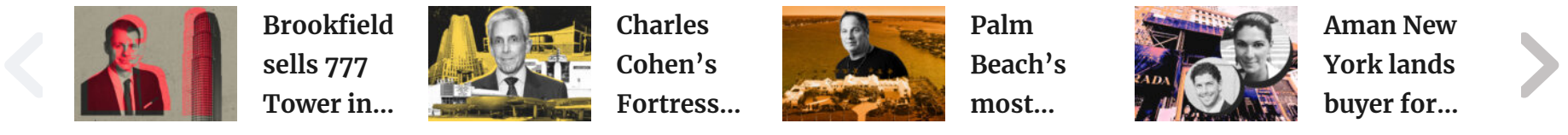


TRENDING



RESIDENTIAL SOUTH FLORIDA

“Even more difficult.” Here’s how South Florida’s condo buyout landscape will shift following landmark ruling

Condo associations may have to secure buy-in from a majority or all unit owners before developers will consider these deals, insiders say



Two Roads' Reid Boren and Taylor Collins with 5333 Collins Avenue, 2121 North Bayshore Drive, and 5445 Collins Avenue (Two Roads, Google Maps, Getty)

By Katherine Kallergis
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But the developer’s plan to demolish the building and construct the new Edition condo tower is now in limbo, after Florida’s Third District Court of Appeal this month found that the Biscayne 21 condo declaration gave every unit owner an effective veto over any termination of the association. The appeals court **reversed a lower court decision** that had denied the plaintiffs, a handful of holdout unit owners, a temporary injunction in their lawsuit against Two Roads Development. The unit owners’ suit alleged that the developer illegally amended the condo declaration.

The court’s decision will likely result in fewer condo buyout deals making it to the finish line, experts say.



Haber Law's David Podein (Haber Law)

“It makes something that’s already very difficult even more difficult,” said attorney David Podein, a Haber Law partner, regarding the ruling’s effect on condo buyouts. He is not involved in the Biscayne 21 litigation.

Two Roads is seeking a rehearing, and if unsuccessful, it plans to take the issue to the Florida Supreme Court. Whether the court decides to hear the case is unclear. The state’s Supreme Court only hears a limited number of cases each month.

TRD Biscayne, the Two Roads affiliate sued by the unit owners, said in a statement that the Third DCA’s ruling “undermines the laws put in place to protect residents who are living in old, deteriorating buildings which are in need of significant maintenance and repair.”

Developers pursue condo **buyouts** for a number of reasons. Little to no undeveloped waterfront land exists in South Florida, so they look to purchase the majority of units in older buildings on land with favorable zoning. Because it can be so expensive to maintain and repair older buildings, especially in the years since the deadly **Surfside condo collapse**, oftentimes many owners will agree to sell. The soaring cost of **insurance** is one expense that has doubled or tripled for many properties.

The developers that chase these deals are household names in South Florida real estate, including the Pérez family’s Related Group and David Martin’s Terra.

After purchasing the majority of units, developers move to terminate the association so they can redevelop the site.

The appeals court ruling puts pending buyout deals on hold, especially those where the condo documents required 100 percent approval for a termination, as written in Biscayne 21’s declaration.

“The language in the Biscayne 21 declaration is pretty common,” said Bilzin Sumberg attorney Joe Hernandez, who previously represented the developer-controlled association at Biscayne 21.

Developers will probably be quicker to walk away from deals where a favorable outcome is unlikely, in part because lenders won’t be willing to finance the bulk purchases, Hernandez said.

But not all deals are dead, sources say. It could push developers to only pursue properties where the association agrees upfront to sell, with clear terms and enforceable deadlines.

“You’ve seen associations pursuing terminations more from the driver’s seat,” Podein said. “Instead of developers buying up units and trying to get to a critical number.”

That could also mean more infighting within associations between those who want or need to sell, and those trying to hold out for a bigger payday. Pressure is mounting for older buildings, as condo safety deadlines, required under the law passed after the Surfside collapse, are quickly approaching.

“You are going to see a rise in litigation, holdout owners. Part of that is from the stress of increased costs coming,” Podein said. “These are very personal disputes. Many people live their lives in these buildings.”

Attorney Charles Brecker, a partner at Dickinson Wright’s real estate practice who represents developers in buyout deals, said the Third DCA’s decision will “certainly” cause problems for pending terminations.

At Biscayne 21, the Two Roads-controlled association voted to amend the condo declaration so that a termination no longer required 100 percent approval, one tactic developers have used over the years. Current state law allows terminations to effectively move forward with just over 95 percent approval.



Dickinson Wright's Charles Brecker (Dickinson Wright)

“Many developers and lawyers thought you could back-door amend the docs,” Podein said.

Two Roads has been preselling the first of three planned towers on the bayfront site, an Edition Residences building. The development firm’s statement did not address a Plan B if the issue is not reheard or taken up by the state’s highest court, but if it were to settle with the remaining units, it would likely cost the developer millions of dollars.

While a number of deals have been proposed up and down the coast, many aren’t successful. One building could go through a dozen offers over the years, to finally sell to a different developer.

“You could not get 100 percent of this building to tell me it’s sunny outside,” Brecker joked.

He is among a handful of attorneys who said he respectfully disagreed with the decision, and he has looked at a dozen possible condo terminations recently.

“Only one or two made sense,” Brecker said. “Because of the language of the declaration, because of the law at that time, many terminations just won’t work.”