

News Alert - D&T Properties, Inc. v. Marina Grande Associates, Ltd.

Introduction

On June 11th, the 4th District Court of Appeal ruled in favor of condominium developer Marina Grande Associates, Ltd., upholding, but on different grounds, the trial court's ruling that a buyer could not rescind its pre-construction sales contract due to a 36% increase in the condominium budget stemming from increased property insurance premiums, rising electricity costs and the developer's decision to upgrade standard bulk cable service to a bundled cable, telephone, and internet package.

Case Synopsis

The Appellate Court's decision relied on 2007 amendments to Sections 718.503 and 718.504 of the Condominium Act indicating that increases to the estimated condominium budget that are beyond the control of the developer are not considered amendments giving rise to rescission rights. The Court found that increases in the budget due to a 65% increase in the cost of property insurance and a 32% increase in electric costs were beyond the developer's control and therefore did not give the buyer a rescission right. Furthermore, the Court ruled that the 2007 amendment to the Condominium Act applied to the purchase contract executed in 2005 because the 2007 amendment was clarification of existing law.

The Appellate Court held that the 18.35% budget increase resulting from the upgraded telecommunications package was within the control of the developer; however, to trigger a buyer's rescission rights, the budget increase must "materially" alter the condominium offering in a manner that is "adverse" to the purchaser. While rejecting the developer's argument that the communications package added "value" to the unit and therefore did not have an adverse effect on the purchaser, the Court reasoned that the addition of internet service was reasonable because it has become a "necessity of modern life." The Appellate Court also rejected the lower court's analysis focusing on the financial ability of the specific buyer, and applied an objective test. But rather than evaluating the \$90 a month increase in assessments applicable to the telecommunications package as an 18.35% increase in assessments in determining whether there was a material and adverse effect, the Court reasoned that the appropriate measuring rod was to determine the annual increase in such assessment payments of \$1,080 as a percent of the purchase price. This calculation resulted in a .21% increase which the Court had no trouble finding was not material.

This decision is likely to have a far reaching impact on condominium developers and buyers since increases in estimated condominium budgets have been a frequent basis for attempts to rescind pre-construction purchase contracts.

If you have any questions or would like additional information, please contact Martin A. Schwartz at 305.350.2367.

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