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General partner reneges on buyout agreement

Limited partner gets fees, costs

\$1.71 million verdict

The limited partner in an affordable housing limited partnership brought action against the partnership's general partner alleging breach of the partnership agreement and breach of fiduciary duty, based primarily on the defendant's use of the proceeds of a refinancing of the partnership property to undertake a condominium development on an undeveloped portion of the property, which ultimately was never built.

After extensive discovery and the presentation of an expert report by plaintiff's counsel, the parties entered into a settlement by which the defendant was required to purchase the plaintiff's limited-partner interest for \$2.6 million by a specified date.

When the defendant failed to close as required, the plaintiff filed a motion seeking enforcement of the agreement, which was allowed by the judge.

After further discovery, the plaintiff elected to seek damages for breach, equal to the difference between the \$2.6 million and the interest's fair market value on the date of breach, instead of specific performance.

In addition, the plaintiff filed a supplemental complaint and sought and obtained reach-and-apply and injunctive relief, freezing the defendant's interests in both the partnership at issue and another affordable housing partnership, and ordering those partnerships to maintain any fees or other payments due to the defendant in a separate account pending the entry of judgment.

The judge awarded the plaintiff \$1.48 million, the amount requested. At the judge's direction, the plaintiff submitted an application for award of fees and costs incurred in enforcement of the settlement agreement. The judge granted the application virtually in its entirety, awarding attorneys' fees, expert fees and costs in the amount of \$262,852.

Action: Contract

Injuries alleged: Breach

Case name: Urban Improvement Fund Limited-1973 v. Lombardi Corporation

Court/case no.: Suffolk Superior Court (Business Litigation Session), No. SUCV2006-01331BLS

Jury and/or judge: Judith Fabricant

Amount: \$1.71 million

Date: June 4, 2012

Most helpful experts: David Smith of Recap Real Estate Advisors, Boston; Walter Pennell of Hunneman Appraisal & Consulting, Boston

Attorneys: Richard M. Bluestein and Janet S. Lundberg, of Krokidas & Bluestein, Boston (for the plaintiff)

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