

## Court Case Implies Trend in Buyer's Remorse

By James Comtois

MIAMI—Since property values on condos have been decreasing, condo speculators wagering on flipping their investments in large real estate developments have recently been trying to back out their contracts. One recent tactic involves leveraging a provision in the 1968 Interstate Land Sales Disclosure Act to rescind their contracts.

This month, a Miami-Dade Circuit Court ruled in favor of a developer represented by Akerman Senterfitt attorneys Scott Rostock and Dana Clayton, affirming an earlier federal court decision providing for a two-year statute of limitations for rescission actions under ILSA and rejecting the plaintiffs' contention that ILSA's general three-year limitations period applied.

According to Akerman Senterfitt, in the case, the plaintiff brought suit against its client, Leviev Boymelgreen Marquis Developers, seeking to rescind a condominium purchase contract under ILSA, claiming that it did not receive a property report before signing the contract. In response, the Leviev Boymelgreen Marquis Developers moved to dismiss. It was undisputed that plaintiff did not exercise his rescission rights within two years after signing the contract. In response, the plaintiff argued

that his claim was governed by the general three-year statute of limitations under ILSA, rather than the specific two-year statute of limitations.

Akerman Senterfitt argued that where two statutes of limitations might be read to apply, the more specific limitations period should be applied; to apply the three-year statute of limitations would render the two-year statute of limitations meaningless; and three-year statute of limitations still applies to claims other than damages.

The court agreed with Akerman Senterfitt's arguments and dismissed the complaint.

"This was an important victory in condominium litigation, with interstate implications, since there is not much case law on condo contract disputes," said Michael McMahon, chair of Akerman's litigation practice group in a statement. "We expect the trend in speculative condo litigation matters to expand regionally throughout the U.S. as long as the housing market remains depressed."

According to Akerman Senterfitt, this is not the first attempt by condo speculators to back out of contracts with developers. The struggling real estate market has left those looking to

flip their investments scrambling to back out of contracts in order to avoid losses. These cases have included arguments that oral agreements promising favorable returns on investments should be considered binding, over a written and signed contract.

One judge termed these types of cases as a classic example of buyer's (or multiple buyers') remorse.

"It's inevitable that closings will be impacted by the credit crunch, but after the most recent ruling in the Miami-Dade Circuit Court we expect that those buyers still qualified for financing will likely close rather than lose substantial deposits," said Richard Bezold, chair of Akerman's real estate practice group in a statement.

Separately, less than a year ago, Akerman Senterfitt attorneys Chris Carver, Rob Chaskes and Ryan Roman successfully handled a case for the non-developer defendants where seven condo purchasers in Key West, Fla., sought to escape their contracts on fraud, negligent misrepresentation and related grounds, demanding the return of approximately \$1.5 million in deposits and subsequent release from the obligation to pay an additional \$6 million more for the units.