

# Adam Leitman Bailey, P.C.'s Victories Named 4 Out of 8 Biggest Cases of 2011

REAL ESTATE'S LEGAL LANDSCAPE

## NYC'S BIGGEST REAL ESTATE BATTLES

*A scorecard on eight active lawsuits that may impact the entire industry*

By LEIGH KAMPING-CARDER

Not everyone has the stomach for a lawsuit—taking an otherwise private disagreement into the public realm and submitting it to the cool evaluation of the court.

But sometimes situations are untenable, and parties consider judicial intervention the only recourse. The resulting lawsuits can have a broad impact, reaching beyond the businesses involved to encompass the industry as a whole.



Consider the condominium contract dispute that could affect the way New York City developers handle purchase agreements for new condos. Or the suit between residential brokers whose failed alliance could become fodder for a jury trial. Or a federal agency's offensive against a slew of major banks over mortgage-backed securities.

On these pages, *The Real Deal* profiles some of the biggest active legal battles in the New York City real estate community.

## 20 Pine buyers v. 20 Pine developers



In March, nearly 70 homeowners at 20 Pine Street filed a \$58.4 million suit claiming the Financial District condominium tower is rife with construction defects, blaming sponsor Africa Israel USA and seemingly every contractor, marketer and executive who ever worked on the building.

The suit, which has never been reported on, is not the first time the 258-unit tower has been the subject of litigation.

In 2009, two buyers sued the 20 Pine developers for alleged violations of ILSA, the Interstate Land Sales Full Disclosure Act. (They reached a settlement in August, court documents showed.) Later that year, Aristone Capital Funding sued developer Shaya Boymelgreen, who is no longer involved with the project, for allegedly defaulting on a \$3.2 million construction loan.

That suit was dropped in early 2010; Boymelgreen could not immediately be reached for comment.

Aaron Abraham, a partner at New York law firm Goulston & Storrs, which represents Lev Leviev's Africa Israel, vowed to fight the most recent homeowner suit, and on Sept. 12, he filed a motion to dismiss the homeowners' claims.

"The sponsor is working diligently to meet all of its obligations under the offering plan, and will continue to work in good faith with the board and its legitimate counsel to review and address any issues affecting the building," Abraham said in a statement.

**Adam Leitman Bailey**, who represents the homeowners, declined to discuss the 20 Pine suit specifically, citing his clients' request. However, he said, lawsuits over faulty construction at new developments are among the most prevalent to emerge from the condo boom.

"Many buildings were built badly, and corners were cut, and we've been litigating these," **Bailey** said.

## Stephen Ross v. Bacolitsas



One of the most closely watched real estate cases in the city centers on the battle between developer Stephen Ross and two of his buyers at the Brompton on the Upper East Side.

The dispute is a technical one, which centers on whether ILSA requires developers to ensure that sales contracts -- and not merely property descriptions -- for new construction are in a suitable form for filing with the city, known in legalese as "recordable" form.

In September 2010, a federal judge ruled that it does, handing a victory to Vasilis Bacolitsas and Sofia Nikolaidou, prospective condo buyers who sued to get out of a \$3.4 million condo purchase at the Brompton, developed by Ross's Related Companies, after signing a sales contract and putting down part of a deposit. The decision let them revoke their contract and recover \$520,000.

Now on appeal before the Second Circuit, the decision has drawn cries of protest from the Real Estate Board of New York and the federal Consumer Financial Protection Bureau, both of which filed briefs supporting Related's interpretation of the law. The Second Circuit, which has jurisdiction over New York and nearby states, heard arguments from both sides last month and could soon issue a ruling.

Requiring developers to write contracts in recordable form would create a lien against the property, scaring off commercial lenders, REBNY argued. REBNY also has concerns that the

ruling would make it more difficult for buyers to obtain mortgages.

Bacolitsas and Nikolaidou, however, contend in court papers that developers could easily accommodate the switch to preparing sales contracts, not just property descriptions, in recordable form, since they would not actually have to record the contract, but merely prepare it. "It just changes the practice. It doesn't hurt anyone," said **Bailey**, their attorney.

Mark Edelstein, chair of the real estate finance practice at law firm Morrison & Foerster, said the spate of ILSA lawsuits has already changed developers' practices. "New condos which are coming out of the ground are very sensitive to the issue," he said.

This would not be the Second Circuit's first ruling on ILSA. In March, the court ruled on an ILSA exemption for condos smaller than 100 units, holding that the Fifth on the Park and One Hunters Point condos, in Harlem and Long Island City, respectively, were not exempt from the law, overturning a lower court ruling.

## **Federal Housing Finance Agency v. the banks**

In a bid to recover some of the losses Fannie Mae and Freddie Mac suffered from investing in residential mortgage-backed securities, or MBS, the agency tasked with overseeing the government-sponsored lenders sued 17 banking giants in federal court in New York and Connecticut in September ...

## **Loft owners v. loft tenants**

Some of the biggest legal battles are fought incrementally. Such is the case with the city's loft law. The city passed the original Multiple Dwelling Law in 1982 as a means to convert formerly industrial buildings with illegal residents -- many of them in Soho -- into properly certified, rent-stabilized residential buildings. The law applied to properties with tenants living in them in the two years before the law passed (and going forward) ...