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Condo buyers ask for answers from bankrupt developer



place as the developer hangs precariously on a proposal to reorganize by leasing and selling units. **Bank of America** and a consortium of lenders want the bankruptcy dismissed so they can take over the project.

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by [Paul Brinkmann](#)

Some of the wreckage from Miami's busted condo boom surfaced at a recent meeting of creditors in the bankruptcy of Cabi Downtown, developer of the twin-tower project called Everglades on the Bay.

Buyers, such as Tom Frazer of Davie, had a chance to ask questions of the company at the meeting. The company's CFO, Santiago Pique, did most of the talking while Cabi Downtown manager Elias Amkie Levy sat quietly most of the time. The owners of Cabi, members of the Cababie family of Mexico, were not present.

"After five years of waiting, I just want my money back," said Frazer, who put down a deposit on a 16th-floor unit in 2004.

The Sept. 18 meeting took

One creditor said she had just been laid off and was in danger of losing her primary home if she did not get her \$83,000 deposit back.

The developer's attorney, Mindy Mora of **Bilzin Sumberg Baena Price & Axelrod**, said the company was sorry to hear of some buyers' misfortunes. But, she said the bankruptcy filing had temporarily halted the developer's ability to close on any sales or offer refunds without the judge's permission.

"In the next two weeks, we'll file a motion, seeking to set up a procedure whereby purchasers can settle their claims," Mora said.

The meeting was held at the Claude Pepper Federal Building, about a half-mile from the condo towers. The room is plain and was filled with a hum coming from air-conditioning vents. Several condo buyers in attendance said they had trouble hearing.

Steven Schneiderman, an attorney with the Office of the U.S. Trustee, conducted the meeting. He peppered Amkie, Mora and the developer's representatives with questions about its finances, organization and the sequence of events leading up to the bankruptcy.

"The bankruptcy was filed on the same day a foreclosure action was filed," he said. "Did that have anything to do with the timing of the bankruptcy?"

Mora said the developer had been preparing the bankruptcy filing, and the timing was a coincidence.

The 49-story towers have 849 units. The developer has claimed the buildings are finished, except for minor punch-list items. But, Bank of America alleges in court documents that more serious problems exist, including 60 units damaged by a plumbing leak.

economy could hurt reorganization

Many buyers just want their money back, according to attorneys representing multiple purchasers.

"From our perspective, it will be difficult for Cabi to reorganize because of the economy," said **Ely Levy**, an attorney with **Militzok & Levy** in Hollywood who had filed civil lawsuits on behalf of 12 buyers before the bankruptcy. "These are the challenges that developers are facing in this economy."

Among the allegations in buyers' suits: that the developer entered into a leasing program without notifying them, that some units are smaller than promised and that the existence of a master association for the entire property was not disclosed.

Mora said during the creditors meeting that the project was completed on time, obtaining a certificate of occupancy in October 2008.

Schneiderman dwelled for a few minutes on questions about intercompany loans made between Aventura-based Cabi Downtown and other affiliated companies run by the Cababie family.

The Cababies are also principals in GICSA, one of Mexico's largest real estate developers.

Levy said he thinks more scrutiny of those loans is needed, to make sure buyers' deposits at Everglades on the Bay were used for that project.

"I thought the U.S. trustee's office did a fine job in questioning, and anticipating what questions the various creditor groups would have had," he said.

Illustrating the urgency felt about some of the issues in the case, an attorney – who arrived late and appeared flushed – said his father had died a few hours before, but he felt he had to show up anyway. Several other attorneys in the crowd offered to share notes with him.

"We want to pursue this in bankruptcy court because things move faster there than in state court, and there's less ability to delay," Levy said.

He said most of his clients put down 20 percent deposits on units and expect that half of the deposit amount was used for construction costs as allowed by law. He said some international buyers – of which there are many – were required to put down 30 percent.

pbrinkmann@bizjournals.com / (954) 949-7562

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Militzok & Levy, P.A. is currently taking cases to recover pre-construction deposits in Everglades on the Bay as well as many others developments in Florida. For more information, visit our website at http://www.mlflaw.com/condo_deposit_recover.asp