

Residents, developer of Gables club file lawsuits

By Gary Roberts, Coral Gables Gazette

Plaintiffs allege construction defects

February 26, 2001 - The Gables Club, already the focus of published reports that outdated building and fire codes are being used in the construction of the new residential high-rise, is facing more controversy, this time from within its own community.

The residents of The Gables Club, a luxury, twin-tower condominium development at 10 Edgewater Dr., have filed a \$5 million lawsuit against the project's builder/developer and general contractor claiming extensive building defects. In addition, the developer himself, Marc Kovens, who is also a resident of the 16-story project, has filed suit on his own behalf and that of The Gables Club Condominium Association against several sub-contractors for shoddy workmanship and the use of inferior materials.

The problems of The Gables Club were first publicized in last weeks's Gazette in an article that detailed how construction of the second tower, which began earlier this year, is being constructed according to outdated building and fire codes that existed prior to Hurricane Andrew, despite opposition from Coral Gables' officials.

The Coral Gables Building and Zoning Department ordered the new building be built according to the code requirements updated in 1994 as a result of the destruction wrought by Hurricane Andrew two years earlier. However, the Miami-Dade County Board of Rules and Appeals unanimously voted to overrule the city and approve construction, based on the South Florida Building Code established in 1988.

Now comes word that residents in the first tower, completed in 1996, are initiating legal action against Kovens due to serious construction defects in their building which include faulty air conditioning, roof and window leaks, cracks in stucco and slabs, falling roof tiles, seawall corrosion, electrical problems, pool and tennis court surface failures, and loose balcony hand rails, to name a few. The plaintiffs allege in their suit, filed in December 2000, that these defects jeopardize the fitness and salability of their units.

"We purchased a home here thinking that we could spend our retirement years relaxing," said Kal Bass, a lead plaintiff in the case. "What we did not expect was to deal with construction defects that have seriously affected our use and enjoyment of our condominium and community amenities."

The complaint details how the air conditioning does not work properly in the summer months, and how residents' lives are endangered by roof tiles falling to the ground below.

Thomas E. Miller, one of the nation's leading experts in construction defect litigation, is representing the plaintiffs along with local counsel. Miller described the lawsuit as a representative action in which any future judgement will benefit all residents, not just the

40 homeowners who have joined the suit to date.

"The developer's rush to meet the buyers' demand for high-rise condominiums with expansive vistas has turned a promised luxury development into a living nightmare," Miller said. "As the developer is taking reservations on the yet-to-be built second tower of this development, critical mistakes in design and construction have now been uncovered in the now-completed first 99 units."

Kovens could not be reached for comment, but his own filing of a lawsuit presents a bizarre twist in the legal wrangling now under way.

In January, Kovens filed suit against a number of sub-contractors on the project, including Morse Diesel International, Hill York Corporation, Robert Swedroe, P.A., McDowell Engineering Consultants, Consul-Tech Engineering, Jaffer Associates, and Murton Roofing Corp.

Sam Hollander, who moved into The Gables Club in May 1997 and is another lead plaintiff in the residents' suit, questions not only Kovens' intent regarding his own lawsuit, but also the timing. Hollander said protracted negotiations between residents and the developer regarding complaints yielded nothing but a constantly changing array of excuses.

He explained that only when residents set a deadline for resolving the issue did Kovens file his own suit-on the very same day.

"We've tried at many different times, in many different ways to work this out with the developer. He had three-and-a-half years to address these construction issues and take action. Instead, he procrastinated," Hollander said. "The day of the cut-off date he decides to file suit. That's like the fox guarding the chicken house."

Hollander alleged that Kovens' suit is nothing more than a preemptive strike to ward off the residents' lawsuit and deflect responsibility from himself. Moreover, Hollander charges that Kovens controls the condominium association, but does not represent the residents.

"His interests are far different from our own. He is the developer; we are the residents. He is acting on his own for the most part," Hollander said.

The residents' attorney also challenges Kovens' suit on legal grounds.

"In 99 percent of the cases filed over construction defects the homeowners' association names the developer as the primary party at fault," Miller said. "We're concerned that if he takes the lead with his lawsuit, we won't get the \$3 million to \$5 million needed for repairs. We want to make sure there's money available to us at the end of this."

Miller explained that his firm's fees are paid through a straight contingency agreement.

The Miller Law Firm gets paid only if it wins. As a result, the firm conducts extensive

research before accepting a case to ensure that the defendant is able to pay damages. He said both the plaintiff's case and the defendant's ability to pay meet all criteria.

"We really have to believe in the case. We take on a substantial risk," Miller said. "Insurance provides a very limited amount of money to the developer for construction defects. We have to look at the financial strength of the developer and the general contractor."

As part of the investigation, Miller hired a highly respected engineering company, Atkins Engineers, to assess the situation at The Gables Club. "This report is the basis for our suit. It documents substantial defects."

Miller added that his law practice, The Miller Law Firm of Newport Beach, Calif., has earned a national reputation in litigation against construction defects, winning more than \$350 million on behalf of his clients. The current wave of new, so called luxury developments has generated a lot of new business for his firm, he said, and a large portion of his client list hails from South Florida.

"This is a significant trend, particularly in the Miami area. We have been contacted by a number of persons claiming construction defects from there," Miller said.

"I think it's the result of the rapid growth and demand for that kind of product. Whenever you find yourself in a building boom, it becomes commonplace for builders to cut corners, and whenever that happens you're going to end up with a need for significant repairs of several million dollars to fix the problems."