



SECOND ILSA LOSS FOR CONDO PLAINTIFFS IN TWO MONTHS

Decision may signal trend in favor of developers, attorney says

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By Adam Pincus



Joseph Simone and One Hunters Point

For the second time in seven weeks, a federal judge in New York state has sided with a developer against buyers of condominium units who tried to use the Interstate Land Sales Full Disclosure Act, or ILSA, to cancel contracts and get deposits back.

A judge in Brooklyn federal court ruled in favor of the developer of One Hunters Point in Long Island City, against eight plaintiffs who had given over \$563,285 in deposits, a decision filed March 12 shows.

In the previous case in January, for the first time in 20 years in New York, a federal judge ruled on an ILSA case. In that case, a Manhattan judge sided with Uptown Partners' [5th on the Park](#) against two buyers who wanted to get their deposits back at the Harlem project. ILSA decisions are closely watched by developers and buyers who are looking at these early cases as harbingers for

how the dozens of pending cases in New York City will turn out.

In the Long Island City case, the plaintiffs last year sued Joseph Simone, president of builder Simone Development; as well as the project's sponsor Borden East River Realty, at the 132-unit Long Island City project at 5-49 Borden Avenue.

Bruce Lederman, a partner with D'Agostino, Levine, Landesman & Lederman, who represented Borden East River Realty, said the win appeared to be part of a trend.

"There are some decisions in Florida and some decisions now in New York that have both gone in favor of the [developer](#)," Lederman said. "I think these will severely limit the number of claims in New York."

The plaintiffs said the project was subject to ILSA rules because more than 99 units were sold before the temporary certificate of occupancy was issued. The buyers arrived at a total greater than 99 by adding the 98 condo sales to the 12 parking lot space and roof terrace units that were also sold, for a total of 110 units.

Under the 1968 ILSA law, the developer of land that has been subdivided into 100 parcels or more must register with the U.S. Housing and Urban Development, as well as provide buyers with a disclosure report before the closing. Such disclosures were not filed by the development, court filings say.

But the judge said the parking and rooftop units were not subject to ILSA, only the 98 residential units, so the project would not be subject to the federal law, judge Allyne Ross' ruling in favor of the developer said. The New York Law Journal first reported the decision yesterday.

Lawrence Weiner, a partner with law firm Wilentz, Goldman & Spitzer, who represented the plaintiffs in Long Island City as well as the buyers in the 5th on the Park condo, said he would appeal as he did with the Manhattan case.

"It seems the [Brooklyn] court just adopted the [Manhattan] court's rationale," he said. "The [U.S. Court of Appeals for the] Second Circuit will have to address the issues."