IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT, IN AND FOR WEST FLORIDA COUNTY, FLORIDA

One, Two, Three, Four, and Five, individually, Plaintiffs, vs. BUILDER, LLC, a Florida limited liability company, Defendant.	CASE NO.

COMPLAINT FOR DECLARATORY JUDGMENT, RESCISSION, AND OTHER RELIEF

Plaintiffs, (collectively APlaintiffs@ or APurchasers@), hereby sue Defendant, Builder, LLC, a Florida limited liability company, and aver as follows:

The Parties

1. Plaintiff, One, is an individual, *sui juris,* and resides in City, Florida.

2. Plaintiff, Two, is an individual, *sui juris,* and resides in City, Florida.

3. Plaintiff, Three, is an individual, *sui juris,* and resides in City, Florida.

4. Plaintiff, Four, is an individual, *sui juris,* and resides in City, Florida.

5. Plaintiff, Five, is an individual, *sui juris,* and resides in City, Florida.

6. Defendant, Builder, LLC (ABuilder@ or ADefendant@), is a Florida limited liability company, authorized to do business in the State of Florida and is doing business at 1234 Address, Big City, FL, 32123.

Jurisdiction

7. This is an action for declaratory judgment, rescission, and damages in excess of $15,000.00, exclusive of interest, attorney's fees and costs.

Venue

8. Venue is proper in West Florida County as it is the county in which Plaintiffs= claim arose and is where the real property is located that is the subject of this action.

General Allegations

9. Defendant, Builder, is a developer of a condominium known as High Rise Condominium, Phase 2 (AHigh Rise@).

10. On or about November 11, 2004, Plaintiffs entered into a contract with Builder (Athe Contract@) for the purchase of Unit Number, High Rise Condominium, Phase 2 (Athe Unit@).

11. Pursuant to paragraph 1(b) of the Contract, Plaintiffs deposited with Builder= escrow agent (AEscrow Agent@), the sum of $1.00 (the ADeposits@). A true and correct copy of the Contract is attached hereto as **Exhibit A1.@**

12. Pursuant to paragraph 4(a) of the Contract, Builder agreed Athat construction of the Unit will be completed, and the same shall be ready for occupancy, before two (2) years from the (contract) date, subject, however to extensions by acts of God, strikes, and other causes beyond Seller=s control which would justify an extension under Florida law.@

13. The effective date of the Contract is November 11, 2004, making completion of the Unit by Builder due on or before November 11, 2006.

14. Builder has failed timely to substantially complete construction of the Units as provided in the Agreements.

15. The failure to timely complete is contrary to both the terms of the Agreements and representations by Builder that the Units would, in fact, be completed within two years.

16. In May 2006, Builder sent a letter to Plaintiffs which states;

> AAs you are no doubt aware, Florida has been hit with a record number of hurricanes the past couple of years, as well as the fact that hurricanes have struck other parts of the country have caused substantial shortages in building supplies like block, steel, concrete, PVC, and drywall, as well as significant labor shortages. These construction material shortages combined with the construction delays caused by last hurricane season and the anticipated delays for the upcoming hurricane season may result in up to a five (5) month delay in the delivery of your respective unit.@ A true and correct copy of the letter is attached hereto as **Exhibit A2.@**

17. The May 2006 letter from Builder goes on to state;

> AIt is our position that the delays caused by the hurricanes and shortages of construction materials and qualified laborers have had a direct impact on project schedule and our ability to meet the two (2) year construction window to complete your unit. Hence we are requesting that you complete the enclosed amendment extending the outside completion date for your Unit by an additional five (5) months. Again, this is an outside completion date for your unit and I can assure you that everything is being done to complete your unit as quickly as possible.@

18. The five (5) month extension requested by Builder to complete the Unit would make completion of the Unit due on or before April 11, 2007.

19. Enclosed with the May 2006 letter from Builder to Plaintiffs was a document entitled AAmendment to the Condominium Purchase Agreement@ (Athe Amendment@).

20. Notwithstanding the representations made by Builder in the May 2006 letter to Plaintiffs, paragraph one (1) of the Amendment states as follows;

> ANotwithstanding anything in the Contract to the contrary, Seller and Buyer hereby agree to amend section 4(a) of the Contract such that the Unit will be completed and the same ready for occupancy no later than August 31, 2007, for Phase II Units, subject however to extensions by acts of God, strikes, and other causes beyond Seller=s control which would justify an extension under Florida law.@ A true and correct copy of the Amendment to the Condominium Purchase Agreement is attached hereto as **Exhibit A3.@**

21. By letter dated July 5, 2007, Plaintiffs made demand for return of the Deposits for various reasons; including the failure of Builder to timely complete the units. A true and correct copy of the letter is attached hereto as **Exhibit A4.@**

22. In the July 5 letter, Plaintiffs also demanded cancellation and return of the Deposits because the Contract failed to comply with the Interstate Land Sales Full Disclosure Act, 15 U.S.C. ' 1701, et seq. (AILSA@).

23. On July 24, 2007, Plaintiffs again demanded return of the Deposits, setting forth in further detail the reasons that rescission and return of the Deposits was required. A true and correct copy of the letter is attached hereto as **Exhibit A5.@**

24. Despite such demands, Defendant Builder has failed and refused to return the Deposits to Plaintiffs.

25. Plaintiffs are entitled to the immediate return of all Deposits paid pursuant to the Contract, because Builder has failed to comply with ILSA, and in any event, Builder has breached the Contract by failing to timely complete the Unit.

26. As a result of Defendant=s failure and refusal to refund the subject Deposits, Plaintiffs have retained the undersigned counsel to pursue their rights and are obligated to pay a reasonable fee for services rendered.

27. Pursuant to paragraph 28 of the Contract, AIn the event of litigation to enforce any of the terms and provisions of this Agreement, the prevailing party shall be entitled to receive all reasonable attorneys fees incurred therein, including fees for appeals, together with any and all costs disbursements expended therefore.@

COUNT I

Declaratory Judgment and Rescission

28. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 27 above.

29. This is an action for declaratory relief pursuant to section 86.011, Florida Statutes, and for rescission and cancellation of the Contract and return of the Deposits.

30. High Rise is a development subject to the requirements of ILSA.

31. A developer subject to the requirements of ILSA is required to file a statement of record with the Department of Housing and Urban Development (AHUD@) and to provide potential purchasers with a property report derived exclusively from the statement of record in advance of the purchaser signing any sales contract or agreement.

32. No such property report was delivered to Plaintiffs prior to the time they entered into the Contract with Builder. Indeed, no such property report was ever delivered to Plaintiffs.

33. A developer may exempt itself from the ILSA requirements if it meets the requirements of the ILSA exemption provisions.

34. In order to be exempt from compliance with ILSA, the agreements for construction of the condominium units must contain an unconditional obligation to complete construction within two (2) years and must not limit the purchaser=s remedies of specific performance or damages. See Samara Dev. Corp. v. Marlow, 556 So. 2d 1097 (Fla. 1990). Any conditions that qualify the obligation to complete a building within two years nullify the applicability of the exemption.

35. If the developer is not exempt from the provisions of ILSA and if no property report is furnished prior to the execution of the agreement, as a matter of law, purchasers have Aa

statutory right to rescission and refund of their deposits.@ Schatz v. Jockey Club Phase III, Ltd., 604 F. Supp. 537, 539 (S.D. Fla. 1985) (emphasis added.)

36. Plaintiff has asserted that the Agreements fail to satisfy the ILSA exemption requirements and that therefore the Agreements are unenforceable and the Deposits should be returned forthwith to Plaintiff, which Defendant disputes.

37. A genuine dispute exists between Plaintiff and Defendant as to the validity and enforceability of the Agreements and Defendant=s compliance with ILSA, because various provisions of the Agreements make the 2-year build requirement conditional and therefore illusory, including without limitation:

38. Paragraph 4 of the Agreement does not constitute an unconditional obligation to complete construction of the Unit within two years. Specifically, paragraph 4(a) of the Agreement makes the two year period for completion subject to extensions by acts of God, strikes, and other causes beyond the Seller=s control which would justify an extension under Florida law. Furthermore, paragraph 4(b) of the Agreement authorizes Seller to postpone the closing of the Unit Afor any reason.@

39. Furthermore, in spite of the language of the Agreement, Builder has not completed construction of the Unit within the time period provided for under paragraph 4.

40. By Defendants own estimation, the acts or events which would constitute just cause for an extension of the two year completion period under the Agreement, may have caused at most, a five month delay in the completion of the Unit.

41. It is important to note, that Defendant=s five month delay estimation included anticipated delays for the upcoming hurricane season and other delays which Builder attributes to hurricanes which occurred prior to the time that the Agreement was entered into by the parties.

42. As a result, Defendant=s five month extension included time for events and acts which do not constitute permissible delays under Florida law or the Interstate Land Sales Act.

43. Assuming arguendo that Defendant is entitled to an extension for the entire five month delay it estimated, there is no justification under the Interstate Land Sales Act or Florida law for an extension of the two completion date for the Unit beyond April 11, 2007.

44. The conditions upon completion imposed by the Agreement and the Amendment render the obligation to complete construction of the Units within two years entirely illusory.

45. Because the Agreements do not contain an unconditional obligation to construct the condominium within 2 years, Defendant was required to comply with ILSA by registering the development with HUD and providing Plaintiff with a property report. Failure to do so is strictly construed to provide the purchaser with the statutory right to rescission and return of all deposits.

46. For the foregoing reasons, the Agreements are rescindable and voidable. Based on the failure of the Agreements to comply with ILSA, Plaintiff has no adequate remedy at law and is therefore entitled to rescission of the Agreements and return of the Deposits as has been previously demanded by Plaintiff.

47. The validity and enforceability of the Agreements has continued to be an issue in dispute between the parties, and rather than return the Deposits to Plaintiff, Defendant has demanded that Plaintiff close on the Units when completed.

48. For these reasons, Plaintiff has a bona fide, actual, present and practical need for a declaration as to his rights and obligations under the Agreements and is entitled to a declaratory judgment pursuant to section 86.011, Florida Statutes, rescission of the Agreements, and return of the Deposits.

WHEREFORE, Plaintiffs seek judgment as follows:

a. declaring the Agreements as to Unit Number voidable due to Defendant=s noncompliance with ILSA;

b. rescinding the Agreement;

c. ordering immediate return by Defendant to Plaintiffs of the Deposits in the amount of $1.00;

d. ordering a speedy hearing and advancing the declaratory action on the calendar, as provided in section 86.111, Florida Statutes;

e. awarding Plaintiffs their attorneys= fees incurred in this matter pursuant to paragraph 28 of the Agreements, together with prejudgment interest and costs; and

f. such other and further relief as the Court deems just and proper.

COUNT II

Breach of Contract

49. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 27 above.

50. Pursuant to the terms of the Agreement, Defendant was required to complete the Unit and have it ready for occupancy within 2 years.

51. The requirement in the Agreement to complete construction within 2 years expired on November 11, 2006.

52. Defendant alleges that delays caused by hurricanes and shortages of construction material constitute permissible delays under section 4 of the contract and demanded that Plaintiffs amend the Agreement to extend the outside completion date of (the) Unit by nine months past the two year window for completion.

53. By Defendants own admissions, the events which would constitute a permissible extension of the completion date for the Unit under ILSA delayed the construction of the Unit by less than five months.

54. Paragraph 14 of the Agreement states in pertinent part:

> The following sentence will supersede and take precedence over anything else in this Agreement which is in conflict with it: If any provisions serve to limit or qualify Seller=s substantial completion obligation as stated in paragraph 4 hereofY, or grant seller an impermissible grace period, and such limitations or qualifications are not permitted if the exemption of this sale from the Interstate Land Sales Full Disclosure Act pursuant to 15 USC sec. 1702(a)(2) is to apply Y, then all those provisions are hereby stricken and made null and void as if never a part of this Agreement.

55. The extension period requested by Defendant in the Amendment to the Agreement grants Defendant an impermissible grace period under ILSA, and as a result, the Amendment is stricken and made null and void under paragraph 14 above.

56. Consequently, Defendant has failed to complete the Unit within the two year period allowed under the ILSA Defendant and has breached the Agreement causing Plaintiffs damages.

57. All conditions precedent to this action have occurred or have been waived.

WHEREFORE, Plaintiffs demands judgment in their favor in total amount of their damages, ordering the return of the Deposits to Plaintiffs, and awarding attorneys= fees pursuant to paragraph 28 of the Agreement, together with prejudgment interest and costs, and such other and further relief as the Court deems just and proper.

COUNT III

Conversion

58. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 27 above.

59. Despite demand for return of the Deposits, Defendant has failed and refused to return the Deposits to Plaintiffs.

60. Defendant=s failure to return the Deposits constitutes an act of dominion over property rightfully belonging to Plaintiffs inconsistent with their ownership, thus converting the Deposits to Defendants= own use.

61. Plaintiffs have made demand for the return of the funds, which Defendant has refused.

62. All conditions precedent to this action have occurred or have been waived.

63. As a result of Defendant=s conversion, Plaintiffs have suffered damages in the aggregate amount of the Deposits.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant in the total amount of their damages, for an order requiring Defendant to return the Deposits to Plaintiffs, together with attorneys= fees pursuant to paragraph 11 of the Agreements, prejudgment interest and costs, and for such other and further relief as the Court deems just and proper.

Dated: September ___, 2007.

THE BYRNE LAW FIRM
Attorney for Plaintiff

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