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Developer's RICO Suit Over Failed \$23M Real Estate Deal Axed

By **Jake Simpson**

Law360, New York (October 30, 2012, 3:39 PM ET) -- A New York state court recently granted a motion to dismiss one of several suits by a Brooklyn real estate owner against his former partner, Banco Popular North America and others over a failed \$22.6 million real estate project, ruling that the plaintiff failed to state a valid claim.

New York Supreme Court Judge Carolyn E. Demarest said in an Oct. 22 opinion that claims brought by Martin Daskal against Joseph Tyrnauer and others under the Racketeer Influenced and Corrupt Organizations Act were insufficient as a matter of law because Daskal did not provide specific facts as to how the alleged conspiracy unfolded and did not allege a racketeering enterprise as required in a RICO claim.

At issue is a failed attempt to develop a mixed-used property with residential and retail components at a site on Greene Avenue in Brooklyn. Daskal and Tyrnauer, who at the time owned WTC Construction, formed a 50-50 partnership in 2001 to develop the property. They formed an operating company, Green LLC, which secured the \$22.6 million loan from Banco Popular in 2006. The loan was to be disbursed on a rolling basis as phases of the project were completed, according to court documents.

Daskal alleged that Tyrnauer submitted false lien waivers from subcontractors on the project to get additional funds from Banco Popular. The Banco Popular vice president responsible for the loans, Gregory Miedzynski, continued to authorize the release of funds to Tyrnauer even after Daskal told Miedzynski not to, according to Daskal's complaint.

Tyrnauer attempted to sell his share of the Greene project in 2009, but the deal was blocked by Daskal. The project eventually failed, and Banco Popular successfully moved for summary judgment in a foreclosure action against Green LLC in January.

Judge Demarest said that Daskal failed to state facts supporting his allegation that the alleged enterprise between Tyrnauer's companies and Banco Popular acted as a single unit.

"Plaintiff does not plead the role that each person or entity played in the alleged enterprise, but merely states, in conclusory fashion, that the Tyrnauer companies constitute an 'association-in-fact,'" the judge said. "Such conclusory allegations are wholly insufficient to satisfy the pleading requirements of the statute."

The judge also found that the heart of the claims against Tyrnauer and Banco Popular did not constitute enterprise fraud or corruption that would satisfy a RICO claim.

"Plaintiff is simply attempting to craft a claim under RICO based upon purely personal disputes between two business partners," Judge Demarest said. "Thus, the court finds that

plaintiff has failed to adequately plead the existence of an 'enterprise' as required by RICO, and has failed to state a cause of action in his first and second causes of action."

The judge noted that there are several other suits currently pending between Daskal and Tyrnauer. As a result, she ruled that both parties are precluded from commencing de novo actions on the same subject matter.

Counsel for both parties could not be reached immediately Tuesday.

Daskal is represented by Michael Korsinsky of Korsinsky & Klein LLP.

The defendants are represented by Steven Weg of Goldberg & Rimberg PLLC and Steven Lucks of Fishkin Lucks LLP.

The case is Daskal v. Tyrnauer, case number 500734/2011, in the New York Supreme Court, Kings County.

--Editing by Jeremy Barker.

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