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Appeals court upholds \$36 million judgment against water district

By Micah Maidenberg



Ritz-Carlton Residences are at 664 N. Michigan Ave.
Photo by Erik Unger

The Metropolitan Water Reclamation District of Greater Chicago failed to persuade the Illinois Appellate Court to take its side **in a long-running dispute** with the developer of the Ritz-Carlton Residences, putting Cook County taxpayers on the hook for \$35.8 million.

In a ruling June 9, the court unanimously upheld a judgment that a venture of Chicago-based Prism Development Co. won against the water agency last year in Cook County Circuit Court.

“We’re obviously pleased with the result and we certainly hope this brings the matter to an end,” said David Gustman, partner and head of the litigation practice group at Chicago-based Freeborn & Peters LLP who represented the Prism venture. Jon Rodgers, a principal at the development firm, declined to comment.

The ruling is the latest turn in a nasty legal fight now in its eighth year. The primary issue in the dispute concerns an alley between the 89-unit Ritz tower, 664 N. Michigan Ave., and the water district headquarters, 100 E. Erie St., just west of the high-rise.

Prism accused the water district of blocking its access to the alley by keeping it locked during a roughly three-year period ending in May 2008, disregarding easements that gave the developer the right to use the alley.

Prism needed to use the alley to demolish older structures on the development parcel starting in March 2007 and to build the tower. Lack of alley access delayed the project and forced the company to incur higher loan costs, according to the appellate court’s review of the litigation.

In the ruling, appellate court Justice Thomas Hoffman wrote there “is clearly an adequate basis in the record to support the court’s finding that (Prism’s) demolition and construction activities were delayed by the District’s conduct.”

“We respectfully disagree with the opinion issued by the Illinois Appellate Court,” a water district spokeswoman said in an email. “We are evaluating our options in order to determine our future course of action.”

LIMITED OPTIONS

After two rulings against it, the water district’s choices are limited.

The agency could ask the appellate court to reconsider its ruling or appeal the decision to the Illinois Supreme Court, said Mark Belongia, a Chicago-based partner at Duane Morris LLP. It also could try to settle the case with Prism or simply cut a check and move on, he added.

“None of them are great options,” said Mr. Belongia, who’s not involved in the case. “The developer has prevailed at the trial court level and the appellate court level. There are two judicial court bodies that have heard the facts, applied the facts to the law and the outcome twice was that the (developer) was victorious.”

The three-judge appellate court panel awarded the Prism venture slightly less than the \$36.4 million the firm won in Cook County Circuit Court last year, saying the district was not responsible for permitting delays that boosted interest costs by \$670,000. Prism had sought \$66.5 million from the agency.

As of the first quarter, just 14 of the 89 Ritz residences were sold or under contract, according to a report from Chicago consultancy Appraisal Research Counselors.

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