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Justice Watch: Battle Intensifies Over One Bal Harbour

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John Pacenti

Gary Daniels recalls when Jorge Arevalo announced he and his brother Juan would manage the financially troubled One Bal Harbour Resort & Spa.

Daniels, an owner of two units and president of 10295 Collins Avenue Hotel Condominium Association Inc., said he foresaw significant problems with the plan in the summer of 2009.

Arevalo through his company had just purchased 51 condo units and common areas, and Regent Hotel & Resorts had pulled its flag.

“There were no longer any checks and balances in place,” asserted Daniels, who runs a Philadelphia hedge fund. “They had no experience in managing a five-star hotel. They had never even been in the hotel industry. Part of what we bought into is that there would be a five-star operator.”

The crescent-shaped tower consists of 185 condos with individual owners, 124 hotel rooms owned by investors and shared facilities including a spa, pool, lobby, restaurant and valet parking.

Daniels, in an interview with Daily Business Review, said his concerns proved prophetic.

One Bal Harbour is now the subject of an intense court battle in Miami-Dade Circuit Court where the building’s two associations are alleging fraud. Similar accusations have been brought in the bankruptcy of Arevalo’s Elcom Hotel & Spa LLC.



Arevalo formed Elcom with Tom Sullivan, founder of Toano, Virginia-based Lumber Liquidators Holdings Inc. They purchased the 51 units and amenities for \$14.6 million and decided to manage it after Regent departed.

WCI BANKRUPTCY

One Bal Harbour became available for sale after its previous owner, Bonita Springs-based WCI Communities Inc., filed for bankruptcy in 2008.

Daniels and the association's representatives insist the plight of residents and investors have been ignored among all the "excuses" made in court for the financial mess created by Elcom.

A labyrinth of financial books kept by the Arevalos has made it impossible to trace all the money, he said.

Daniels points to numerous proof of claims filed in May in U.S. Bankruptcy Court in Miami by residents and the two associations. He said they spell out the fraud committed by the Arevalos, including:

- An alleged \$1.6 million insurance fraud
- Alleged misappropriation of \$1.1 million from the furniture, fixtures and equipment escrow account and
- Failure to pay \$11.8 million in shared facilities assessments for the units Elcom owned.
- Failure to pay assessment fees on their units.

The hotel condominium association filed a \$27.6 million claim, while the residential condo association filed a claim of about \$10 million.

A lawsuit filed in Miami-Dade Circuit Court by the hotel condo association claims the brothers siphoned off \$2.6 million from operations of One Bal Harbour to buy sports cars and live lavishly.



WCI'S FAULT

Jorge Arevalo's attorney, Joe DeMaria, a partner at Tew Cardenas in Miami, said the problems at the complex can be traced to WCI and poor decisions made by the state court judge and the receiver she appointed.

"What they realized after they got into the deal was the books were a mess. Jorge Arevalo tried very hard to clean up those books," he said.

DeMaria also criticized the forensic accounting report performed by Berkowitz Pollack Brant Advisors and Accountants LLP that forms the basis of the proof of claims.

Berkowitz Pollack "never asked to sit down with my client," he said. "It's really easy to summarize a report and make allegations, but it's another thing to prove it."

He blames the receiver appointed by Miami-Dade Circuit Judge Barbara Areces for running up fees and forcing Elcom into bankruptcy. He also blames Areces for a budget shortfall for not fully approving an assessment fee plan proposed by his client.

Former Miami-Dade Circuit Judge Jorge J. Perez, who was removed as receiver last December, rejected the criticism.

As for the other allegations, DeMaria said his client used the \$1.1 million in the escrow account as it was intended: for improvements. He said different rules governed Elcom's payment of assessments.

U.S. Bankruptcy Judge Robert A. Mark hopes the sides can work out their differences. On Wednesday, he ordered the associations to enter mediation by Sept. 16 on "plan-related issues."

The hotel condo association also is ramping up its criticism of Sullivan.

Association attorney Steven Pardo, a partner at Pardo Gainsburg in Miami, said Sullivan was not a passive investor, taking \$9 million out of the property once the Arevalos' management was questioned.



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Mark Meland, a partner at Meland Budwick, P. A., in Miami who represents Sullivan, said his client has been instrumental in the bankruptcy process.

“Mr. Sullivan is a respected businessman and philanthropist who had no knowledge of any malfeasance at One Bal Harbour,” Meland said. “The allegations are meritless.”

‘UNDERSTATEMENT’

In an interview, Pardo said all the protestations by the Elcom principals fall short. He recalled what Areces said in 2011 when appointing the receiver.

“To say that the property is being mismanaged is an extreme understatement,” Areces said. “Plaintiffs have provided evidence, beyond a shadow of a doubt, of fraudulent, deliberate, self-dealing by certain principals of the defendants for the purpose of misappropriating funds.”

Pardo also points to the testimony of Elcom’s former finance director, Gail Beregovich, before Areces in July 2011. Beregovich, according to a court transcript, said she was asked to doctor financial records.

According to the transcript, she testified Jorge Arevalo didn’t want any written communications or emails to avoid a paper trail. After refusing to alter documents, Beregovich said she started to fear for her life and complained to security one day about her coffee tasting “foul.”

“I can’t explain why she was afraid of her coffee,” DeMaria told the DBR. “It’s ridiculous no matter what you want to say about Jorge Arevalo. He is not physically intimidating.”

The numerous proof of claims from the associations, residents and even Sullivan add up to more than about \$60 million.

“The damages are substantial,” Pardo said. “That is why the claims that have been filed will be documented and proven will exceed the value of the hotel lot if its gets sold.”



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DeMaria countered the hotel is worth only about \$20 million and asserted Pardo is playing a game of legal chess.

“They are doing this to put leverage over the bankruptcy estate so if they get a sale they can threaten long and expensive litigation,” DeMaria said.

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