

Hanley's Highlights, Citing Reports! Continued from p. 2

- ◆ A reminder in Co-op and Condo Corner regarding the many benefits that buildings can utilize by joining the Cooperative and Condominium Advisory Council (CCAC) of the BRI. Jane Curtis, chair of the CCAC, wrote the report.
- ◆ An article from the Institute of Real Estate Management (IREM) that summarizes how a coalition of housing providers and lending associations issued a recent warning on the many negatives of rent control.
- ◆ A report on how Cybersecurity is becoming increasingly important in the home building industry. The analysis was written by NAHB.
- ◆ A realty industry analysis on how the combination of high interest rates and low inventory dampened buyer demand and were the chief causes in significant declines in residential sales transactions during the third quarter throughout the Hudson Gateway Association of Realtors (HGAR) market area. The HGAR market area includes Westchester, Rockland, Putnam, Orange, Sullivan and the Bronx.

Here's wishing each of you all the best for upcoming holidays. All of us here at the BRI hope that you enjoy the season. And, this issue!

Partnership Files a Rezoning Request for the Multi-Billion Dollar Redevelopment of the Galleria Site in Downtown White Plains

WHITE PLAINS

In what officials said would be the largest conversion of an enclosed shopping mall into open space, mixed-use residential and retail in the New York metropolitan tri-state region, Pacific Retail Capital Partners (PRCP), The Cappelli Organization, SL Green Realty Corporation and Aareal Bank, owners of The Galleria at White Plains, recently presented a plan to the White Plains Common Council.

Officials said the presentation is "a key first step for the visionary redevelopment, spanning multiple city blocks in the heart of downtown White Plains."

The project would eliminate, officials added, the vacant and outmoded 43-year-old retail mall and reimagines a new future for the downtown area, connecting the community to much-needed transit-oriented housing and creating a vibrant, economically vital, and welcoming center of life in the heart of White Plains.

The multi-billion-dollar District Galleria presentation is the culmination of more than seven years of in-depth review and strategic master planning and features seven residential towers of varied heights with up to 3,200 apartments, of which 384 would be designated as affordable, in accordance with the City of White Plains Affordable Rental Housing Regulations, officials said.

Officials said that the buildings would combine state-of-the-art technology and building systems with amenity based/community needs for the residential units, including fitness, grocery, dining, professional and personal services. The District Galleria is being designed as a sustainable project, meeting the silver LEED standard of high-energy efficient building materials.

Nearly half of the project's footprint is designated as open space, breaking down existing barriers and creating a quarter mile-long green promenade complete with pet playgrounds, pocket parks, and lush landscaping for community gatherings, outdoor events, public entertainment, and art, officials added.

The District Galleria, officials cited, features a garden promenade designed to link the adjacent neighborhoods at eight different access points, providing a place for the public to live, shop, walk, play, engage and be entertained.

Officials said that the redevelopment of the Galleria site would align with the city's strategic plan to expand transit-oriented development. The project aims to enhance the city's skyline with buildings of varied heights to maximize views and create a light filled and landscaped place of natural beauty and elevated design.

Annemarie Plenge, executive vice president of Design for PRCP, is the Master Architectural Designer of the project. Plenge brings a wealth of more than 25 years of professional

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Building Industry Analysis: Single-Family Starts Across the U.S. Post Unexpected Gain in September As High Interest Rates Persist

WASHINGTON, D.C.

Despite elevated mortgage rates averaging above seven percent, single-family starts across the U.S. posted a solid gain in September as more buyers are turning to new homes because of a dearth of inventory in the resale market.

Overall housing starts increased seven percent in September to a seasonally adjusted annual rate of 1.36 million units, according to a report from the U.S. Department of Housing and Urban Development (HUD) and the U.S. Census Bureau. The data was analyzed in an Oct. 18 study by the National Association of Home Builders (NAHB).

The study said that the September reading of 1.36 million starts is the number of housing units builders would begin if development kept this pace for the next 12 months. Within this overall number, single-family starts increased 3.2 percent to a 963,000 seasonally adjusted annual rate. However, single-family starts are 12.8 percent lower year-to-date due to higher interest rates. The multifamily sector across the U.S., which includes apartment buildings and condos, increased 17.6 percent to an annualized 395,000 pace, the study added.

"The uptick in single-family production was somewhat unexpected as our latest builder surveys indicate that starts are likely to weaken in the months ahead due to recent higher mortgage rates that were near 7.6 percent in mid-October," said Alicia Huey, chair of NAHB and a custom home builder and developer from Birmingham, Ala. "Meanwhile, builders also continue to face persistent labor shortages, a lack of buildable lots and higher financing costs for acquisition and development loans."

"Despite ongoing challenges in the market, the housing deficit of resale inventory continues to provide some market support for builders," said NAHB Chief Economist Robert Dietz. "Because of a lack of existing homes in the marketplace, 31 percent of homes available for sale in August were new construction. This compares with a historical average in the 12-14 percent range. But in another sign that higher interest rates have slowed the market, the number of single-family homes under construction in September was 674,000, which is almost 15 percent lower than a year ago."

On a regional and year-to-date basis, combined single-family and multifamily starts are 23.3 percent lower in the Northeast, 12.9 percent lower in the Midwest, 7.8 percent lower in the South and 16.9 percent lower in the West, the study said.

Overall permits decreased 4.4 percent to a 1.47 million unit annualized rate in September. Single-family permits increased 1.8 percent to a 965,000 unit rate. Single-family permits are down 13.4 percent year-to-date. Multifamily permits decreased 14.3 percent to an annualized 508,000 pace, the study added.

Looking at regional permit data on a year-to-date basis, the study said that permits are 22.3 percent lower in the Northeast, 16.6 percent lower in the Midwest, 12.7 percent lower in the South and 17.6 percent lower in the West.

The study added that the number of apartments under construction is near 1 million units and will be falling in the months ahead.

Counsels' Corner

In the Middle of Tenant-on-Tenant Harassment

By Kenneth J. Finger, Esq., Dorothy M. Finger, Esq., Carl L. Finger, Esq., and Daniel S. Finger, Esq.

WHITE PLAINS

One of the many difficult situations facing landlords, cooperatives, and condominiums occurs when residents don't get along and, even worse, find themselves at odds.

This can be particularly troubling when racial, ethnic and/or other "protected class" issues arise. Federal, State and Westchester County laws set forth protected classes, such as race, age, sex, religion, national origin, disability and familial status. The remedies pursuant to the various laws can involve injunctive relief and monetary damages, including punitive damages and legal fees.

With the above in mind, what responsibility does a landlord, board of directors, or board of managers have in the event of a resident against resident situation in general and, more particularly, in the event of an allegation that a disagreement includes reference to or is based on one party's membership in a protected class? A recent United States Second Circuit Court of Appeals decision discussed this issue and provides some guidance as to the responsibility of landlords and boards in such circumstances.

In *Francis v. Kings Park Manor, Inc. (KPM)*, the facts were that within a few months of moving in, Francis' neighbor, Raymond Endres ("Endres"), began to subject Francis to racial harassment, abuse, and threats. Endres regularly directed at Francis racial and anti-Semitic slurs, obscenities, derogatory terms, and even death threats. Francis alerted both the police and KPM about Endres' harassment of him. The police also notified KPM about Endres' conduct.

As the harassment continued, between May of 2012 and September of 2012, Francis provided three written notifications to KPM as to Endres' conduct. One of those letters notified KPM that Endres had been arrested for aggravated harassment. KPM took no action and did not respond to Francis' letters. Endres remained a tenant at the apartment complex until his lease expired in January of 2013. In April of 2013, Endres pleaded guilty to harassment, and a protection order was issued from the court, prohibiting Endres from contacting Francis.

In June of 2014, Francis sued KPM and the apartment complex manager, Corrine Downing (collectively, the "KPM Defendants"). Francis alleged that the KPM Defendants' failure to investigate or attempt to resolve Francis' complaints of racial harassment by Endres was, among other things, a violation of the Fair Housing Act of 1968 ("FHA").

Under § 3m604(b) of the FHA, it is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." Under § 3617 of the FHA, it is "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed" any right protected by the Act.

The KPM Defendants argued that "even if a hostile housing environment claim were cognizable under the FHA, Francis failed to allege that they intentionally discriminated against him." They maintained that intentional discrimination was a necessary element of an FHA violation, and that since Francis failed to allege such intentional discrimination by the KPM Defendants, his claims against them should be dismissed. The district court agreed with the KPM Defendants and dismissed Francis' claims under the FHA.

Opinion

This case generated four separate opinions. The first, from the trial court, found the landlord was not liable for not taking sufficient steps to address the matter. Three additional opinions by various components of the Court of Appeals held that the black tenant did not state a Title VIII claim for intentional discrimination based on allegations that the landlord failed to respond to reports of a fellow tenant's race-based harassment. The Court reasoned that the typical powers of a landlord over a tenant, such as power to evict, do not establish the substantial control necessary to state a deliberate indifference claim against a landlord for the tenant's conduct under Title VIII, even assuming that the deliberate indifference theory applies to Title VIII claims.

The ultimate holding was that (1) the tenant failed to state an FHA claim against the landlord for intentional discrimination based on allegations that the landlord failed to respond to reports of the fellow tenant's race-based harassment; (2) the tenant failed to state a housing discrimination claim against the landlord under aiding and abetting provisions of the New York State Human Rights Law (HRL); and (3) that the tenant failed to state a claim against the landlord for negligent infliction of emotional distress, under New York law.

In its opinion, that Court said that for the plaintiff (complaining tenant) to survive a motion to dismiss, he must plausibly allege that he "[1] is a member of a protected class, ... [2] suffered an adverse ... action, and [3] has at least minimal support for the proposition that the [housing provider] was motivated by discriminatory intent." The Court found that it would be speculation to presume that there was "discriminatory intent."

If there was proof that the Landlord exercised "substantial control over the [offending tenant]" and established that the "substantial control existed that was necessary to state a deliberate indifference claim under the FHA" then the decision might have been different. However, the Complainant would also have to show that even if the Landlord had "substantial control" the Landlord's "inaction" was "clearly unreasonable" under the known circumstances.

The Court also found that there were no facts showing that the Landlord "actually participated in or incited" the unlawful conduct. The conclusion by the Court was that "a landlord cannot be presumed to have the degree of control over tenants necessary to impose liability under the FHA for tenant-on-tenant harassment" and thus is not required to take any action to address tenant against tenant.

Editor's Note: The authors are attorneys with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI) and its seven component associations.

NAHB: A Lack of Resales Boosts New Home Sales in September

WASHINGTON, D.C.

Despite mortgage rates that are at a 23-year high, new home sales posted a double-digit percentage gain in September because of a lack of inventory in the resale market.

Sales of newly built, single-family homes in September increased 12.3 percent to a 759,000 seasonally adjusted annual rate, according to newly released data by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Census Bureau. The pace of new home sales in September was up 33.9 percent from a year ago. The data was analyzed in an Oct. 25 report by the National Association of Home Builders (NAHB).

"While more buyers are turning to new construction because of a lack of existing inventory, higher mortgage rates that are approaching eight percent are expected to slow the market in the coming months as affordability conditions continue to worsen," said Alicia Huey, chairman of NAHB and a custom home builder and developer from Birmingham, Ala. "Higher interest rates not only raise the cost of housing for buyers, but



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