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Kirkland and Bell Nunnally Win Jury Trial for AMLI Residential in $38M Dispute

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AMLI Residential Chairman Gregory Mutz and Kirkland & Ellis partner Jeremy Fielding stood side by side last Wednesday as a Houston jury walked back into the courtroom after deliberating for more than four hours.

Mutz, a Vietnam War infantry lieutenant turned lawyer turned real estate developer, was accused of lying, cheating and fraud – allegations he felt threatened to ruin his 40-year reputation as a leader in multifamily residential housing.

"He felt his company and its employees' honor and integrity had been dragged through the mud," Fielding said. "In 40 years of running his business, he had never been sued by a counterparty in a sale."

Denver-based Baron Real Property Holdings accused AMLI, a billion-dollar operation that Mutz founded in 1980, of fraud, breach of contract and negligent misrepresentation over the $57 million sale in 2012 of a Houston luxury apartment complex, which Baron claimed they later discovered had "significant defective conditions." The plaintiff sought $38 million in damages.

Kartik Singpura

After two weeks of trial featuring 16 witnesses, the nine-woman, three-man jury reached a unanimous decision.

"It felt like 10 years instead of four hours of deliberations," Fielding said. "It's just awful waiting for a jury to return with a verdict."

The verdict: A complete victory for Chicago-headquartered AMLI. In fact, the jury ordered Baron to pay $5.8 million in lawyer fees to AMLI.

Jeremy Fielding

"It was the first time I've ever had a client cry when a verdict was returned," said Fielding, who served as co-lead counsel with Bell Nunnally partner Kartik Singapura. "I cried, too. I felt like I'd helped correct a serious injustice."

Lawyers for Baron did not respond to requests for comment.

The parties will be back before Harris County District Judge Donna Roth March 2 for the official entry of the judgment. Defense attorneys are expected to file a motion for a new trial.

The litigation is expected to continue for many years. Both sides hired appellate counsel before the trial even started. AMLI hired Reed Smith appellate partner Alan York of Houston. Baron brought Haynes and Boone appellate partners Kent Rutter and Lynne Liberato into the litigation years before the case went to trial.

AMLI and another real estate company bought the 380-unit luxury complex in Houston known then as West Dallas Place in 2001 and renamed it The Standard on West Dallas. In September 2012, AMLI sold the complex to Baron for $57 million.

Three years later, on Memorial Day 2015, Houston was hit with a storm that dumped 162 billion gallons of water on the city in less than 10 hours. Seven people died in the flooding.

When Baron officials examined the property damage, they discovered "evidence of substantial prior damage and repair work performed within the apartment unit walls [was] covered up by defendants," according to the final amended complaint filed in August

2018 by Lewis Brisbois partner Bill Helfand of Houston, who represents Baron.

Baron claims that AMLI "hid material documents and information from plaintiffs in order to hide the true nature of significant defective conditions on the property of which the defendants were fully aware and many of which defendants actively attempted to hide."

"[AMLI] destroyed material documents and information that would have likely shown the true nature of significant defective conditions on the property," Helfand wrote.

In February 2020, AMLI hired Kirkland's Fielding to join the defense team. Lawyers in Kirkland's Chicago office had previously done transactional work for AMLI. The case was set to go to trial that summer. Covid, of course, had different ideas and the trial was delayed.

But Fielding and the AMLI litigation team in April 2020 filed a Rule 166(g) motion to dismiss Baron's fraud claims because the 2012 purchase and sale agreement stated it was "purchasing the property based solely on its own judgment and not in reliance on any statement or representation by AMLI."

Judge Roth agreed and dismissed the fraud counts.

The rest of the claims went to trial Jan. 27, when the two sides selected a jury.

"We had a contract that explicitly stated an agreement that was contrary to what they were arguing," Fielding said. "We sought jurors who believed in enforcing contracts, even if it meant that a party would be stuck with a big bill."

The case was followed widely by leaders in the multifamily real estate industry. The trial was livestreamed on the internet.

The two parties presented eight live witnesses and eight witnesses by video-recorded deposition.

"In essence, the trial boiled down to a swearing match between two witnesses," Fielding said. "The breach of contract claim turned on which witness the jury trusted."

Baron lawyers argued that AMLI agreed to "provide all records related to and on the property" as part of Baron's "due diligence in investigating the suitability of the property for purchase."

"Our position was, they did not ask for this information, but that we would have given the documents to them if they had asked," Fielding said.

Because of a "prevailing party provision" in the purchase and sale agreement signed in 2012, AMLI had the right to seek legal fees if they want at trial. The jury agreed and awarded $5.8 million.

Mutz, in a written statement, said he felt "vindicated" by the jury's decision.

"This is a legal case that should never have been brought in the first place," Mutz said. "This was a commercial property transaction between a sophisticated buyer and seller with standard 'as is where is with all faults,' covenant not to sue, and related provisions. Such transactions are a time-honored tradition in real estate and something we as an industry rely on as a regular course of business."

"We hope this verdict means other companies aren't forced to defend themselves against similar frivolous and time-consuming litigation," he said.

Other Kirkland lawyers involved in the litigation include Michael Kalis, and Rebekah McEntire.