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Base Village lawsuit at critical moment

Chad Abraham, Aspen Daily News Staff Writer Dec 26, 2018



While the latest phase of Base Village celebrated its grand opening this month, the project is still subject to a lawsuit by a metro district against past and current developers.

Craig Turpin/Aspen Daily News

A year after a Base Village metropolitan district accused a former developer of the huge project, related entities, two banks and other businesses of racketeering and fraud, a judge will decide on multiple motions to dismiss filed by the defendants.

Base Village Metropolitan District No. 2 filed on Nov. 30 a lengthy, “omnibus” motion opposing the dismissal of parties to the lawsuit. The plaintiff claims the scheme by Related Cos., which once owned the project aimed at bringing 1 million square feet of development to Snowmass, involved self-dealing — including the installing of Related executives on metro district boards — in a decade-long conspiracy that allowed the developer to mislead the town and plunder millions of taxpayer dollars.

The defendants contend they did nothing untoward in the years they had dealings with Base Village, calling the allegations normal business activities, and have raised numerous legal defenses in the complex case.

In 2004, the Aspen Skiing Co. and fellow developer Intrawest organized two special metro districts. They imposed property taxes to pay for public infrastructure and services for residents of the 30-acre district. It was anticipated that Metro District No. 1 would own and operate revenue-generating properties, such as an aqua center, parking facilities, a performing arts center and a conference center, and the second district would handling financing, including bond obligations and other debt.

The amended lawsuit, filed in July, begins in a novel way, citing the TV host John Oliver: "Once a special district is created, you can be pretty sure no one is going to be watching what you do," the lawsuit quotes him as saying. "He could have been talking about the fleecing of Base Village Metropolitan District No. 2 by the Related Cos. and its accomplices."

The district's four lawyers wrote that the defendants "filed false reports, misrepresented private development costs as public expenditures, and violated federal and state statutes, ranging from the Colorado Organized Crime Control Act to prohibitions on mail, wire and bank fraud ..."

The districts were established to facilitate construction and acquisition of public infrastructure improvements for the project.

"Because Districts 1 and 2 were originally formed when no residents lived within their boundaries, Related was able to handpick employees to serve on the boards of these districts to do its bidding," the lawsuit says. "These servants of Related abused their positions of public trust."

The plaintiff alleges that included Related spending \$31 million in district money to pay back a lender and millions more in public money for costs associated with private construction. Related and other defendants also hired accounting firms, one of which, Stan Bernstein and Associates, inflated Base Village's worth from an initial estimate in 2004 of \$654 million to \$1.2 billion by 2008, when the real estate market was crashing amid the recession, according to the amended lawsuit, which lists that firm as one of over 15 defendants. This allowed the district's board, which Related controlled, to issue nearly \$48 million in bond debt to help pay off a \$520 million loan that one of its subsidiaries received from a German bank, the lawsuit says. Revenue from development of Base Village, including the sale of 603 condos, by 2012 was to pay the debt.

Other allegations include:

- a principal of a Front Range law firm lobbying the town of Snowmass to create the districts — the firm of White, Bear, Ankele Tanaka and Waldron "made critical omissions and misstatements to the town during the organization process to induce approval of the districts" — and then becoming the new entities' general counsel;
- a financial services firm called D.A. Davidson, which acted as Base Village underwriter and "remarketing" agent, helped ensure the "fraudulent [bond] issuance" despite being aware of both the conflict of interest involving Related's control of the board of directors and that Related intended "to use the bond proceeds to pay itself for past development costs." For this, it "reaped \$1.6 million in fees ... for the district's three bond transactions — transactions which D.A. Davidson knew to be conflicted but which it helped engineer for Related's benefit";
- and that Related authorized District 2 to pay Related in full on a zero-interest loan that didn't mature until 2038.

Moving to dismiss the lawsuit

Another defendant is Snowmass Ventures (SV), the development firm formed by affiliates of the SkiCo, East West Partners and KSL Capital that bought Base Village at the end of 2016 for \$56 million.

District 2 alleges that SV demanded two conditions for the deal to close: first, the refinancing of the issued bonds, "again causing District 2 to overpay" for "junk bonds."

"In other words, Snowmass Ventures facilitated Related using its power over District 2 to take district assets as part of their private real estate closing," the opposition motion says.

And second, Related allegedly violated the project's service plan by reclassifying one-sixth of District 2's property to District 1, including the site of the new Limelight Snowmass hotel. This profited Related by reducing the amount of developer pledges necessary to keep the districts operational, and the reallocation also deprived "District 2 of taxpayer base and significant revenue," the filing says.

But SV and Related rebutted the allegations, with the former saying it played only a small role, noting that District 2's original lawsuit did not even include it as a defendant. Even so, both companies say their actions were legal, ordinary business moves.

Regarding the presale demands, the plaintiff "does not (and could not) allege that either condition was illegal, and the plaintiff does not (and could not) allege that Snowmass Ventures made any misrepresentations or breached any duty owed to the plaintiff," SV's motion to dismiss says. "Indeed, [the lawsuit's] allegations emphasize numerous circumstances consistent with a legitimate investment in the project by Snowmass Ventures."

That includes the District 2 board approving the bond refinancing and movement of property between the districts, and that no one affiliated with SV was on the district boards at the time, the filing says.

“Further, the plaintiff’s allegations all depend on its theory that Snowmass Ventures somehow participated in criminal activity initiated by others,” SV’s attorneys wrote. “But — as all the other defendants demonstrate in their motions to dismiss — the [lawsuit] fails to plead plausible claims of racketeering activity by anyone, and there is no criminal enterprise in which Snowmass Ventures could have participated.”

Related, among other defenses, argues that the statute of limitations bars the lawsuit.

The White, Bear, Ankele Tanaka and Waldron law firm’s motion to dismiss includes a defense known as “unclean hands,” meaning the suit should not proceed because District 2 was actually the party that acted unethically, as well as also using the statute-of-limitations defense.

Thomas Kosich, president of District 2, reminded the Snowmass Village Town Council earlier this month about the lawsuit.

“While I share in everyone’s excitement regarding the grand opening of Base Village, I hope that the town will keep in mind the taxpayers of Metro District 2, which I represent, are pursuing significant damages against the current and past developers,” he wrote in an email.

This story has been corrected. While Clifton Larson Allen is named as a defendant in the lawsuit, the article incorrectly described that firm as having inflated Base Village’s worth. The amended lawsuit names another company that was allegedly responsible for that action.

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