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Market booming for area's attorneys

Local real estate woes mean increase in suits

Pat Gillespie

With the ebb in real estate cash flow, players are turning to lawsuits -- builders, subcontractors and buyers are suing each other to get out of contracts or simply to get paid.

The number of lawsuits filed in Lee County civil court -- those for claims above \$15,000 -- has increased so far this fiscal year about 20 percent from the same time last year, while suits have increased 50 percent in county court, for those less than \$15,000.

"A lot of people are tremendously upside down right now," said real estate attorney Kevin Jursinski. "Everybody's saying, 'Help me, I want to get out of it.' "

Builders are suing potential homebuyers for backing out of deals. Subcontractors are suing builders for not paying them. Former partners are even suing each other.

The wave of lawsuits vary, but all reflect the tough times industry players have fallen on, turning to courts to stay alive.

The median price of an existing single-family home in Lee County has fallen from an all-time high of \$322,300 in December 2005 to \$283,200 in April, according to the Florida Association of Realtors. Meanwhile, the number of homes on the market has quadrupled to about 15,000 as single-family home sales have spiraled down, from 1,084 in December 2005 to only 573 in April.

While Lee County Clerk Charlie Green said he can't say the increase in lawsuits is attributed solely to unhappy builders, buyers and subcontractors, they are definitely a factor.

"When the economy slows down, people's income slows down," he said. "The \$1,000 that didn't seem important then suddenly is important."

Lawsuits

The lawsuits are piling up on the second floor of the Lee County Justice Center and many companies are feeling pressure from attorneys.

"We're in an environment now that I've never seen," said Fort Myers attorney Richard Johnston Jr., who represents Cape Coral-based Caribbean Custom Homes.

Johnston said he will soon be filing a petition for a court-supervised dissolution because the 6-year-old company can't stay in business. The company, headed by Jason McGillicuddy, is named as defendant in 35 lawsuits and another 20 liens. The plaintiff in one of those lawsuits is George Bezanson of Cape Coral, who until November was a partner with McGillicuddy.

Bezanson, in construction for 30 years, said he joined McGillicuddy in 2003 with McGillicuddy handling the financial side of the business. But during the real estate boom, the business took on too many projects and became overextended.

In November, Bezanson quit the business, saying in his resignation letter he made the decision because of untruthful communication, financial misconduct and misrepresentations by McGillicuddy as to the financial status of the corporation.

Now, he's filed two lawsuits. In one, he wants to get paperwork as well as tools and materials he said he used on the job but McGillicuddy has kept. In the same lawsuit, he is suing his former partner for fishing rods, a grill and floats.

McGillicuddy argues the tools are property of the company.

In another lawsuit, Bezanson wants to dissolve Caribbean Holdings of Florida, a corporation he said was designed to fund their business.

"Caribbean wasn't paying the bills," he said. "If you have the money, the subs show up. If you don't have the money, the subs won't work for you."

Like Caribbean Custom Homes, Steve Magner, president of Advantage Builders of America, is feeling the squeeze from lawsuits. Two years ago, he said he spent most of his day dealing with the many homes his company was building. Times have changed.

"It's a daily grind to me," he said. "It's just a matter of allocating my time -- I spend more of it talking with attorneys than my wife sometimes."

Magner said in many of the 14 lawsuits in which Advantage is a defendant, owners are suing for breach of contract because the house's value might have fallen with the market.

"A lot of people don't realize it's a risk; it's not a guarantee," Magner said of investing in real estate. "They want to blame everybody but themselves."

Permitting delays and material shortages can push back completion dates, he said, which typically annoys investors

looking to turn around a property quickly. They often look to find a loophole in the contract that will allow them to get out.

Advantage has filed 26 lawsuits of its own; many allege owners never closed on the property, putting them behind on payments to subcontractors and their own workers.

Filing liens

It's not just owners and builders fighting in the courts. Subcontractors often file liens on property that builders are working on so the builders can't get paid by the bank.

Richard Friday, chief financial officer for Youngquist Brothers, a well-drilling company, has filed 293 liens, according to the Lee County Clerk's Web site.

"We have a very simple philosophy," he said. "We do absolutely great work. If there's a problem, we fix it, and we want to be paid."

Friday said the increase in business in Southwest Florida has brought in more subcontractors and builders from outside the area.

"We're in a world of strangers. You don't know who you're dealing with," he said. "When cash flows are there, people will pay. When it's not there, people have to make choices."

In 2005, he said, builders were spending tomorrow's money, so when jobs stopped coming in, there were shortfalls. And when owners decided not to close on homes because values were down, builders were stuck with the shortfall. That's when the lawsuits began.

"Now, there's a tremendous amount of litigation," Jursinski said. "I don't think we've seen the worst of it yet."

Friday said builders getting into trouble today are those that didn't plan well two years ago.

"There's always someone getting into financial trouble," Friday said. "One of the things about success is you don't pay attention to details."

Mark Horowitz, a Cape Coral attorney representing All City Plumbing in a lawsuit against Merit Homes, alleges the company hasn't been paid for 22 plumbing jobs and 19 septic tank jobs, totaling more than \$150,000.

"The industry is feeling it," he said. "It's not just Merit having problems."

Merit Homes is named as defendant in 37 active lawsuits, many for breach of contract, and in another 130 liens, most of which allege it didn't pay contractors.

Delays coupled with rising material costs, specifically in roofing materials, concrete, dirt and copper, has encouraged this era of reliance on the courts.

"The builders are having a problem making a profit," he said. "It's kind of a perfect storm."

Horowitz said many small subcontractors are surviving because they have no overhead costs and larger subcontractors have enough work to get by.

"It's the medium-sized, family-owned subcontractors who find themselves in the worst predicament," he said. "Money is tighter. It's impacting them for sure."

OTHER OPTIONS

Don't want to file a lawsuit? There are other options for a remedy. Many contracts between builders and buyers have an arbitration clause, which can allow an arbitrator to hear both sides and decide who is at fault. An arbitrator makes a binding ruling, but a mediator also can be hired to make a suggestion about how a judge might rule on a lawsuit, which the parties could agree to. If all legal avenues have been exhausted, reimbursement may be available through the Florida Department of Business and Professional Regulation. Visit myflorida.com/dbpr or call 850-487-1395.