

THE VIEW

WHEN KEITH BIEBELBERG'S CLIENTS LOST THEIR PANORAMAS, HE TOOK THE DEVELOPER TO TASK BY AMY KATES



The glossy ad campaign promised breathtaking, unhindered views of the Hudson River and Manhattan skyline. Sixteen eager buyers spent as much as \$725,000 each for 10 units at Shore South (formerly named ShoreClub), a luxury condo built by The LeFrak Organization, then settled in to enjoy the scenery.

Then the Manhattan development giant, headed by Jamie LeFrak and his father, Richard, plunked another high-rise building, AquaBlu, in front of it. The Shore South residents' promised panorama of the river and skyscrapers was interrupted by the view of a concrete, glass and street wall.

"As one of my clients – a radio personality – put it, he said when he saw that building going higher and higher, he thought, 'They got me. That's it. I've been had,'" says Keith Biebelberg, with Biebelberg & Martin, who was lead counsel for the 16 buyers. "And for quite a while, before I got involved, that was the view of all of them, that 'they got me' and 'I couldn't do anything about it.' But I viewed this as what it really was – hubris by a corporate giant."

While LeFrak sales associates did tell Biebelberg's clients that a building would be going up in front of Shore South, Biebelberg says the artist's drawings showed it would not exceed 11 stories.

"They're told Shore South is going to be 24 stories tall," says Biebelberg, "and most of them said, 'I just want to

make sure I don't see this building in front.'" [The sales team] told them, "It's a nice, short building. If you're buying on the upper floors, you've got nothing to worry about; nothing at all will obstruct your view."

But Biebelberg's clients watched as the building kept creeping toward the sky. "They watched it get to 13 stories. Then 15 stories. Then 18 stories, all the way to 32 stories tall," he says.

Biebelberg was happy to get his client – who had seen themselves as "Davids who cannot fight Goliath" – in front of a jury. "We had a really great jury, a fantastic trial judge," he says. "As laudable as settlement is, sometimes you just need to go to trial. And if a large corporate adversary sees from go that you're prepared and ready, sometimes more dollars end up on the settlement table." The offer went up – but not to a fair amount, in Biebelberg's opinion.

What did happen was an array of defenses on part of team LeFrak. "[They] basically put out a buffet defense," Biebelberg says. "Always something different. I never knew what was going to come next. It was like, 'Oh, here! You don't like this one? Try this instead.' It got to the point where it was just ludicrous."

Biebelberg says one particular "defense stunt" involved the presentation by the LeFrak lawyers of a photo taken through the window of one of his clients' units. "The defense sent their own professional photographer to photograph the views from my clients' units, so that's all well and good," Biebelberg says. "He comes back with these photos that show the Aquablu [looking] half a mile away, not in their faces, like it is, because of whatever lens he used. But where they all wound up with their pants around their ankles was when I blew up a photo of that photo being taken." While the LeFrak photographer was in the unit shooting, Biebelberg's

client was, too, "with a garden-variety iPhone, by the way, nothing fancy" he says. "And in that photo, you can see the AquaBlu, the real deal."

Linchpins in the case included a LeFrak witness who testified that the organization did not know what it intended to build in front of the Shore South condos during the sales of Shore South condos, but Biebelberg says he unearthed master documents that contradicted this defense – and that he found sales notes from the LeFrak associates that contradicted other witness testimony. LeFrak's buffet defense ended with a big win for Biebelberg's clients, a \$1.25 million verdict, which was tripled under New Jersey's consumer-fraud statutes.

For Biebelberg, the real deal has always been getting clients to trial. As a rookie lawyer, he would follow legendary trial attorneys around to the courthouses. "I was always fascinated by trial work, and working for the underdog, so when I was younger I would literally find out where lawyers like Raymond A. Brown were going to be so I could ask them about my cases and watch them in action," he says with a laugh. Biebelberg decries the dwindling number of trials in his practice areas, white-collar criminal defense and commercial litigation. There's nothing quite like a jury trial, he says.

"When you get jurors who are sworn to be impartial," he says, "and you see that people are really getting a fair trial, and that Jamie LeFrak and a whole bunch of other LeFrak witnesses were not going to do any better in the crucible of justice under cross-examination than anyone else just because it's a powerful corporation – that's justice." ■