

Sea Pines Case Settlement in TidePointe Suit

October 10, 2003

Sea Pines reaches settlement in TidePointe suit
advertisement

Developers to get \$5.9 million

BY E.J. SCHULTZ, The Island Packet

Other stories by E.J. Schultz

Published Wednesday, October 8th, 2003

Sea Pines has settled the TidePointe breach-of-contract case for \$5.9 million, almost \$2 million less than the company would have paid had a jury verdict been upheld in state court.

Richard Rosen, the lawyer representing the two businessmen who sued the company over development work done at Hilton Head Island's TidePointe retirement community, said the men settled because there is "a certain beauty to having the cash in your pocket rather than having to wait for an appeal, which could have taken another one to two years."

Rosen also said the plaintiffs were concerned that Sea Pines, which reported net income of \$197,000 for fiscal year 2002, might not have been able to pay the full \$7.8 million verdict.

"Getting a judgment against Sea Pines is not exactly like getting (a judgment) against Exxon or somebody," Rosen said.

Sea Pines officials would not comment on the settlement Tuesday, saying Securities and Exchange Commission rules prohibit the company from doing so.

The deal brings closure to a more than 7-year-old dispute that began when Thomas DiVenere and Pete Pomranz sued Sea Pines, claiming the Hilton Head-based company squeezed them out of development work done at TidePointe.

The men said they had prepared plans, obtained permits and started lining up financing for the project before Sea Pines decided to use other financial backers for the community, in which Sea Pines was an original partner.

This past spring, a Beaufort County jury sided with the two businessmen, awarding them \$7.8 million for lost development fees and ownership stakes in TidePointe.

In a post-trial motion argued in July, Sea Pines lawyers asked state court Judge Perry Buckner to give the plaintiffs the option of getting a smaller award or accepting a new trial. The lawyers argued that the jury verdict was "contrary to the weight of the evidence."

Settlement talks continued while Buckner weighed the post-trial arguments, and discussions apparently heated up in late September. It was then that Sea Pines president Mike Lawrence said any potential settlement would be between \$4.1 million and \$7.8 million. This week's \$5.9 million settlement nearly splits that spread down the middle.

In addition to the \$7.8 million verdict, the plaintiffs also had been seeking to recover another \$1.5 million, mostly representing lost interest income they said they were owed. Rosen, the plaintiffs' lawyer, said that claim was bundled into the settlement.

He said the parties had been negotiating since April and were "finally able to come to a number the Sea Pines board was willing to pay and DiVenere was willing to accept."

The deal will allow Sea Pines to reduce by about \$2 million the \$8.5 million in litigation expenses it had booked as of July 31, according to an SEC filing the company made Monday.

Because Sea Pines' insurance does not cover any losses resulting from the TidePointe case, the company was forced to take out an \$8 million loan to pay litigation expenses. Sea Pines drew on the entire loan recently, using it to contribute to an \$8.2 million appeal bond deposited with the Beaufort County Court of Common Pleas.

It was that deposit, made Sept. 8, that Rosen said made a settlement more possible because it showed the plaintiffs that there was money available.

"Cash has a way of focusing the mind," he said.

Rosen would not say how the two businessmen would split the \$5.9 million.

DiVenere owned the development firm Grey Point Associates, which DiVenere claimed had signed a deal with Sea Pines to own a third of the majority share of the limited partnership that would own TidePointe.

DiVenere has said he brought Pomranz, a former executive in the senior-living services division of Marriott Corp., in on the project to help with feasibility and market studies.

TidePointe opened in 1996 and was later purchased by its current owner, Classic Residence by Hyatt, the senior living affiliate of Hyatt Corp.

DiVenere and Pomranz now both live in Florida.

Contact E.J. Schultz at 706-8137 or eschultz@islandpacket.com.