# HIGH COURT LEAVES HOTELIER WIN IN HARD ROCK SECURITIES ROW

By Natalie Rodriguez
2/24/2014

Law360, New York (February 24, 2014, 4:59 PM ET) -- The U.S. Supreme Court on Monday refused to hear an appeal of a Ninth Circuit decision that said sales of condominium units in a San Diego Hard Rock hotel did not amount to securities deals, letting stand a win for condominium-hotel owners and operators.

Denying certiorari without explanation, the Supreme Court's decision means that a putative class action lodged at hotel operator Tarsadia Hotel and broker Playground Destination Properties Inc. by buyers of several of the condominium-style units, who alleged securities fraud, will not be revived. The Ninth Circuit decision that is left standing has been touted as a win for the hospitality industry.

“We are obviously delighted for our clients that this long and expensive journey has ended, vindicating all defendants. For the industry, we believe the decision has significant and far reaching impact on fractionalized interest developers. For the first time, a court has squarely addressed the issues as to when federal securities law applies to sales of fractionalized interests including condo-hotels,” Frederick Kranz of Cox Castle & Nicholson LLP, an attorney for Tarsadia Hotel, told Law360 on Monday.

In August 2013, the Ninth Circuit dismissed the case, finding that an eight- to 15-month gap between the buyers' real estate purchases and the execution of a rental management agreement offering buyers a percentage of income from renting out the units meant that the transactions were distinct and thus didn't constitute the sale of a security.

“The decision is a clear statement that if two economic events — the sale of the unit and the entry into a rental management program — are separated in time and the management program is not required for purchase of the unit, federal securities laws are not invoked,” Kranz said, noting that developers should still be careful with how they structure their sales programs.

The Supreme Court's refusal ends a long-winding legal run through the court system that started in December 2009, when plaintiffs sued in California federal court, saying that they purchased the units with the understanding that revenue from renting them out to hotel guests would be sufficient to cover their monthly payments. The buyers claimed that Tarsadia violated federal and state securities laws through the alleged misrepresentations.

Currently, the Ninth Circuit case is scheduled to enter mediation over attorney's fees, according to court documents.

Counsel for the plaintiffs could not immediately be reached for comment on Monday.

The plaintiffs are represented by Maria C. Severson, Michael Aguirre and Christopher Morris of Aguirre Morris & Severson LLP.

Tarsadia Hotel is represented by Lynn Therese Galuppo, Ali P. Hamidi, Jonathan S. Kitchen and Frederick Kranz of Cox Castle & Nicholson LLP.

Playground Destination Properties is represented by Daniel M. Benjamin, Chrysta Elliott and Thomas W. McNamara of Ballard Spahr LLP.

The case is Salameh et al. v. Tarsadia Hotel et al., case number 11-55479, in the U.S. Court of Appeals for the Ninth Circuit and case number 13-763 in the U.S. Supreme Court.

—Additional reporting by Kurt Orzeck. Editing by Emily Kokoll.