

Jury finds Hitachi owes \$3M to brokers

BY NATHAN DONATO-WEINSTEIN

SAN JOSE - Former CPS brokers Joe Moriarty, Greg Davies and Eric Fox claimed they were stiffed by Hitachi Global Storage Technologies Inc. for \$3 million in fees.

Late last month, a jury agreed, finding that the tech firm owes more than \$3 million, plus attorney's costs and interest, to the brokers and Cassidy Turley, the firm that acquired the assets of CPS two years ago.

Real estate experts say such fee disputes between commercial brokerages and their clients are rare, but the lawsuit shows the risks that brokers take in the commission-based industry and the need to protect themselves.

"Corporate real estate is unregulated, and it's kind of like the Wild West," said Mike Hogan, a Campbell-based real-estate attorney who is also a licensed broker.



Joel Zeldin

The three brokers on the Hitachi deal worked for more than six years starting in 2003 to position the land — a former IBM disk-drive facility — and find a buyer, said their attorney, Joel Zeldin of Shartsis Friese LLP in San Francisco.

That included helping to rezone the property from industrial to commercial/residential, which increased its attractiveness to buyers, Zeldin said.

They also lined up a buyer, Signature Properties, which agreed to pay \$237 million for the 110-acre site of Cottle Road in 2005, he said.

Signature defaulted on the agreement in 2009 after paying roughly \$30 million in nonrefundable deposits to Hitachi. But the brokers were still owed their fees according to the listing agreement that both parties signed, Zeldin said.

"When it came time to pay, Hitachi wouldn't pay," Zeldin said.

Cassidy Turley sued in October of 2010 for breach of contract, and Hitachi filed a cross-complaint in February 2012 alleging fraud and breach of fiduciary duty.

"They worked hard and effectively and with loyalty toward Hitachi, and Hitachi sued them," Zeldin said.

"That was their reward for 6½ years of work."

The jury in Santa Clara County Superior Court rejected Hitachi's claim, Zeldin said, and at the same time they handed down a verdict favorable to Cassidy after a six-week trial. Zeldin said he wouldn't be surprised if Hitachi filed an appeal.

An attorney for Hitachi did not return several requests for comment. The Hitachi unit, which Western Digital acquired in 2011, has recently been active in selling off pieces of its land. Lennar Corp. paid an undisclosed sum for 40 acres in July, and plans to build hundreds of single-family homes on the South San Jose site.

Documentation important

It's interesting to note that commercial real estate is not as heavily regulated as residential, said Tom Pool, a spokesman for the California Department of Real Estate.

"The idea is that you have arguably more sophisticated parties," he said. "In terms of when the fee is earned, how it's earned, that's all civil and set forth in the contract."

Ralph Holmen, an associate general counsel for the National Association of Realtors, said there are no firm figures on how often client fee disputes arise in the industry.

But he said such issues usually boil down to documentation, and he underscored the importance of ensuring both sides understand what the listing agreement entails.

"Sometimes, the documentation of the relationship of the broker and the client is less formal than it should be," Holmen said. "Clearly, the way to solve that is to have a contract that recites who's obligated to do what and when."

Hogan agreed. He said brokers sometimes focus on the relationship aspect of deal-making and not as much as they should on the terms, he said.

"Brokers tend to try to bring the parties together, and oftentimes they don't get as involved in the specific nuts and bolts of the agreement," he said.

Still, clients have a good reason for paying up regardless of the cards they hold, Hogan said.

"If you have a reputation of carving brokers out of deals, people may steer clear of you and not show your property," he said.

Hogan added that an ambiguous listing agreement didn't seem to be the case with the Hitachi deal. "I was quite surprised that Hitachi would have taken that to court because the listing agreement is quite clear," said Hogan, who reviewed the documents.

In a statement, Cassidy Turley CEO Mike Kamm said: "In very rare instances, the best efforts and intentions aren't sufficient to resolve disagreements, and we're grateful to the jury for affirming our position in this unfortunate situation."



Mike Kamm



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