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7th Circuit affirms verdict for Trump

Bait-and-switch claim not strong enough to bump signed contract

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Billionaire real estate mogul Donald Trump is a two-time winner in the case in which an Evanston woman accused him of an alleged bait-and-switch scheme involving Chicago hotel condominiums.

The 7th U.S. Circuit Court of Appeals on Tuesday upheld a jury verdict and judge's findings in the lawsuit brought by Jacqueline Goldberg.

The federal court jury returned its verdict here in May 2013 when Goldberg was 87. She had sought damages totaling around \$6 million.

In an opinion written by Judge Richard A. Posner, the appeals court panel said "the jury's rejection of the bait-and-switch theory stands."

The lawsuit stemmed from Goldberg's signing of a 2006 agreement to buy two hotel condominium units at Trump International Hotel & Tower along the Chicago River.

The development contains 339 hotel condominium units and 486 residential condominium units.

Goldberg is described in the opinion as a wealthy and financially sophisticated business woman and a certified public accountant. She made a down

payment of \$516,000, intending to buy the hotel condominiums as an investment.

The purchase agreement included a "change clause" which gave Trump the right to modify condominium documents.

After reviewing the purchase agreement with her lawyer, Goldberg asked Trump to give her the right to end the agreement and get her money back if she disapproved of any changes Trump made in the agreement.

Trump refused, but Goldberg signed the agreement anyway, even though Trump already made three changes.

In 2007, Trump made another set of changes greatly curtailing the owners' rights in the hotel facilities.

Goldberg, who believed she had been conned, refused to pay the balance on what she owed for the two units.

In January 2010, Trump canceled the purchase agreement and claimed the earnest money as liquidated damages.

Goldberg maintained that Trump pulled a bait and switch by offering her a share of the profits in Trump Tower and reneged only after she agreed to buy.

Goldberg initially filed suit in Cook County Circuit Court in September 2009. Trump, a New York resident, had the case removed to federal court.

The lawsuit alleged Trump engaged in fraud and violated the Federal Interstate Land Sales Full Disclosure Act, 15 U.S.C.



Stephen Novack

Section 1701. The complaint also asserted breach of contract along with violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, and the Illinois Condominium Property Act, 765 ILCS 605.

The lawsuit named 401 North Wabash Venture LLC and Trump Chicago Managing Member LLC as defendants. Trump controls both of those entities.

The case drew national attention when Trump testified at the weeklong trial before U.S. District Judge Amy St. Eve.

The jury returned its verdict on the fraud and land act claims.

St. Eve entered judgment in Trump's favor on the breach of contract and condominium act claims.

Goldberg appealed to the 7th Circuit and again maintained

that Trump engaged in a bait and switch.

The appeals court panel rejected that argument.

"There is considerable doubt, unnecessary to resolve however, whether this [bait-and-switch] theory could support a finding of fraud in the circumstances of this case, in which the seller declared up front, in the change clause, that it might 'switch,'" the panel's decision says.

The decision adds that Goldberg signed the purchase agreement "with her eyes open."

The panel also affirmed St. Eve's judgment on part of the lawsuit.

Chief Judge Diane P. Wood and Joel M. Flaum joined in the 20-page opinion. *Jacqueline Goldberg v. 401 North Wabash Venture LLC and Trump Chicago Managing Member LLC*, No. 13-3057.

Stephen Novack, a partner at Novak and Macey LLP, argued the appeal on Trump's behalf. His law firm issued a statement on his behalf saying, "Mr. Trump and I are very pleased with the 7th Circuit's decision and hope that this finally puts an end to this meritless case."

Shelly B. Kulwin, a partner at Kulwin, Masciopinto & Kulwin, argued the case for Goldberg.

Kulwin said he and Goldberg are disappointed with the opinion. No decision has yet been made about whether to seek a rehearing in the 7th Circuit.

"But we have no regrets about pursuing the matter and doing what we thought was necessary," Kulwin said.