SNUG SPOT
MEDIATION

Information for Respondent, Sam Vanderman

You rue the day you purchased the empty parcel of land at the base of the hill with the plan to design and build Snug Valley condominiums there. The real estate market was booming, and you anticipated demand for a top-quality contemporary design building. At the time, you had just rented some office space nearby for your small architectural design/build business and observed that many local buildings were clumsy and traditional. You were generally in the business of design/build for other people – developers of office buildings, rental, or condominium complexes. Snug Valley was your first venture as a developer and architect/general contractor.

Now, two years after purchasing the land, and six months after initial completion, only one unit has been sold. The other five units stand vacant, with bottom levels in lower units still dank from the flood. You purchased the land itself for $150,000 and have invested approximately $1,750,000 in designing and building the property. Your business plan called for selling the three upper units at $550,000- $600,000 each and the lower units for $400,000 - $450,000 each or a total of $2,850,000 - $3,150,000. That would have yielded a handsome profit. Of course, the real estate market has declined since then. At present, if the units had no flooding issues, you would estimate their market value as a total of $1.9 million to $ 2.1 million (some of that is in Loren Lichter's unit).

When the Lichter bought their unit, they were enthusiastic about your design's clean, dramatic lines, efficient use of space, lots of light, and soaring ceilings. Lichter bought it after the building had been framed and roughed out, afraid all the units would be snapped up after completion. You do not know much about Lichter, except that they are a writer who works out of a home office, based upon their claims for damaged computer equipment, documents, and books. Based upon these inflated claims, you believe Lichter to be greedy and over-reaching, seeking to profit from your misfortune – a flood caused by an act of nature.

If you cannot guarantee bone dry basement in the future (and you do not know if you can), Lichter will undoubtedly seek to recover the reduced value of their unit, based upon pre-construction renderings showing each unit with two levels. The bottom units included the ground floor and a lower level living space that walked out to the back. The upper units took up the second and third floors. The building also included common basement laundry areas – constructed by capturing a bit of square footage from what would otherwise have been each lower unit's basement space.

You were horrified when the building flooded because you knew it meant selling the remaining units would be difficult to impossible. You were also dismayed to learn that the insurance company had denied claims for reimbursement of property damage. You have reviewed the insurer's (and now the plaintiff's) allegation of negligence in the building's design with living space below grade, given the area's storm drainage limitations and the parcel's location at the base of a hill. In your current professional view, the truth is somewhere in the middle. You had assigned your new, inexperienced associate to measure elevations on the property and to review the storm drainage system. You now know he measured elevations incorrectly and had not reviewed the drainage plans carefully. There were a few notes that would have warranted a follow-up discussion with the city engineer. It was a mistake to rely on the inexperienced associate (who is no longer with you). But it is also true that the rainfall was severe and sustained, dumping more water in a shorter period than normal.

If you had realized the elevation and drainage problems early, you would either have decided against purchasing the land at all, or you would have designed elaborate drainage systems below grade, reducing the useable/livable below-grade space. (Of course, you would have offered less for the land or used less expensive construction materials to offset the cost). At this point, you will obviously take remedial measures, but you may not be able to guarantee all bottom areas as watertight. Though you would no longer market them as living space, some of the area could be refurbished as storage (on cement blocks).

You strongly believe the insurance company should pay for Lichter's damaged property (though not the diminished property value) and you would pursue that claim on behalf of the condominium association. There was no willful failure to disclose anything. The insurance was in the name of the condominium association AND individual unit owner(s), so Lichter has an individual claim if nothing else. The insurer had the right to inspect the building.

You are willing to pay Lichter something for their trouble – to front the reasonable REAL cost of lost property - if they demonstrate legitimate hardship, and let you chase the insurance company. You want Lichter to encourage other buyers. Your problem is finances. You have used all of their condominium purchase funds to pay mortgage interest, but that will run out soon. You do not see how you could pay more than $20,000- $25,000 right now. Just about all of your business equity is tied up in the Snug Valley building. You need some cash flow to keep your business operating in these lean times.

Prepare to participate in mediation to resolve your dispute with Loren Lichter.

