Inside

Latest Reports:

- *Vitro SAB Ruling Sets Limits on Chapter 15 Relief*
- *Major Bankruptcy Filings Continue to Fall*
- *Liquidation Averted for Puerto Rican Real Estate Company*

Research Report:

Who's Who in Edison Mission Energy

Special Report:

Nation's Largest Industrial Auctioneers

Worth Reading:

Bankruptcy and Distressed Restructurings – Analytical Issues and Investment Opportunities

Special Report:

Outstanding Bankruptcy Judges – 2012

turnarounds & workouts

News for People Tracking Distressed Businesses

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Revitalizing San Juan

Complicated Transaction Saves Puerto Rican Company

by Julie Schaeffer

When Zachary Smith of Cadwalader, Wickersham & Taft LLP began representing a U.S.-based hedge fund that was interested in acquiring Puerto Rico's Ciudadela development, the project was in Chapter 7 and on the verge of liquidation – but not for long. Smith quickly negotiated a multi-party deal that restored the case to Chapter 11, structured a private sale of the project and related securities, and obtained all necessary government approvals.

"It was a transaction that from the outset looked to be very complicated, with many barriers to entry, but it was actually done in four and a half months from start to finish," recalls Smith.

Located in the up-and-coming neighborhood of Santurce in San Juan, Ciudadela is a mixed-used residential and commercial development with a number of public spaces – "part of an urban revitalization effort," says Smith.

"Phase one and phase two had approximately 320 apartments, plus 1,000 parking lots and approximately 80,000 square feet of retail space," says Roberto Abesada-Agüet of Correa -Acevedo Law Offices, P.S.C., Smith's local counsel in Puerto Rico. "And there are 206 more units planned for phase three."

Dreams of changing the neighborhood, however, would ultimately be put on hold: The project was partially completed when the development company managing the project – Miramar Real Estate Management – filed for Chapter 11 in March of 2011.

That was a problem not just for the developer but for San Juan. "The local government had been trying to revitalize Santurce since the 1990s, and if it weren't for this transaction, we would have had a big property in the middle of Santurce abandoned with one or two commercial tenants already serving the area and suffering as a result of the slow sales," says Abesada-Agüet.

That spring, Cadwalader, Wickersham & Taft was retained by a hedge fund that was interested in acquiring Ciudadela. Ultimately, the situation presented numerous challenges. "The case had been ongoing for nearly a full year, and no material progress had been made toward a resolution," says Smith, who notes there were disputes between the debtor and the lender, Banco Popular, as well as occasional litigation occurring. Second, the Ciudadela project wasn't actually owned by Miramar, but by a subsidiary of the company, La Ciudadela de Santurce, Inc.

Smith began working with Miramar and Banco Popular, which had a $200 million credit facility on the property, to reach a global agreement. When the parties came close to reaching a deal, they collectively asked the court to restore the case to a Chapter 11.

"The purchaser wanted to acquire the project through a 363 process in Chapter 11 in order to secure all of the protections a purchaser can obtain by doing so, and to do so on an expedited basis," says Smith. "If the case had remained in Chapter 7, it would have been even more difficult to do that with the added presence of a Chapter 7 trustee."

The court granted the motion to restore the case to a Chapter 11 in what Smith says was an atypical move. "It's unusual to have the major constituents in a case – the debtor, the

continued on page 2

Revitalizing, *from page 1*

secured creditor, and purchaser – jointly ask the court to put the case back into a Chapter 11 so a 363 transaction can be effectuated," he says.

Once the case was back in Chapter 11, Smith negotiated two simultaneous 363 transactions. "The first was for Miramar to acquire the Ciudadela project from its non-debtor subsidiary, and the second was for Miramar to sell the assets to the purchaser under section 363," he says.

Achieving court permission for those transactions, says Smith, required the debtor to make a number of convincing arguments, which it did. "The deal was part of a global settlement that resolved some controversies between the debtor Miramar, the non-debtor subsidiary, and Banco Popular. In addition, we believed that the importance of the Ciudadela project to the public interest represented a sound argument in support of the 363 transactions."

Once the court granted permission for the 363 transactions, Smith got to work finishing the deal, though it wasn't easy. "The deal had to be structured in a way that ensured all the pieces worked together seamlessly," he says.

Ultimately, the deal benefited everyone, as stated in the sale motion: "The debtor, working in close concert with [Banco Popular] and the purchaser, has brought this case from the uncertain and bleak prospect of Chapter 7 to a fully consensual resolution in Chapter 11 that serves the interests of all constituencies – including general unsecured creditors of the debtor's estate, who otherwise would not be entitled to any recovery."

The result, said the motion, would "avoid the value destruction attendant to Chapter 7 or a foreclosure, provide finality and closure to the myriad disputes related to the Ciudadela project, dispense with the need for otherwise costly and uncertain potential litigation, and benefit in a truly meaningful way both the Puerto Rico economy and the public interest."

In addition to converting a Chapter 7 to a Chapter 11 and getting two simultaneous 363 transactions approved, Smith says the case was significant it how cooperatively it was achieved. "Given the importance of the Ciudadela project to the San Juan community, the transaction attracted significant government attention, and our team worked cooperatively with senior government officials to obtain the critical support necessary for the transaction to succeed."

"There were a lot of pieces of the puzzle that needed to be worked out before the transaction was completed, and all of it was subject to bankruptcy court approval, so this whole transaction was intense for all of us," says Abesada-Agüet. "Ultimately, it was a team effort between Cadwalader, Wickersham & Taft and our team of attorneys in Puerto Rico, which included Correa-Acevedo together with tax, bankruptcy, and government affairs local attorneys working together with the seller, lender, and the local government." ¤