

Clients & Friends Memo

Lenders File Motions to Dismiss Twenty-One General Growth Properties Bankruptcy Cases as Bad Faith Filings¹

June 4, 2009 Metropolitan Insurance Company has joined ING Clarion Capital Loan Services, Inc., Wells Fargo Bank, N.A., and FRM Funding Company, Inc in requesting the Bankruptcy Court to dismiss as bad faith filings the bankruptcy cases of twenty-one property level CMBS borrower subsidiaries of General Growth Properties, Inc. ING filed the first motion on May 4th with respect to eight debtors, and a hearing was set for May 27th. That hearing was subsequently adjourned to June 17th. Creditors having similar motions to be heard on June 17th were required to file their motions to dismiss by May 29th. Metropolitan Life filed motions to dismiss the cases of ten additional debtors just prior to the deadline.

The Lenders' motions advance similar arguments. Each motion argues that the loans in question were performing loans at the time of the bankruptcy filing and that the debtors faced no immediate financial crisis. Each motion argues that the mortgaged property is generating net cash flow substantially in excess of debt service and that none of the loans has a scheduled maturity date earlier than one year following the filing of the bankruptcy case. Some do not mature for years. The motions argue that no efforts were made to negotiate extensions of the loans. Some of the lenders allege that the cases should be dismissed because the entities in question did not follow proper internal procedures for authorizing the bankruptcy filings.

GGP has stated that the bankruptcy filings were necessary so that the project-level subsidiaries could bargain with creditors to extend the terms of the CMBS debt. The Bankruptcy Code does not require that a voluntary debtor be insolvent or unable to pay its current debts. A bankruptcy petition generally will not be dismissed as a bad faith filing as long as the debtor has a legitimate rehabilitation objective. The Bankruptcy Court will decide whether the need to restructure debt with a large principal payment due on maturity constitutes a legitimate rehabilitation objective under the facts and circumstances of these cases.

GGP's formal reply to the motions to dismiss is due on or before June 8th.

¹ The memo was authored by Mark Ellenberg, Peter Dodson and Michelle Raftery, attorneys in the firm's Financial Restructuring Department.

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