

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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If you have any questions regarding the contents of this memo, please do not hesitate to contact Mark C. Ellenberg at (202) 862-2238 or mark.ellenberg@cwt.com or any of the following Partners:

Financial Restructuring

Ingrid Bagby	+1 212 504 6894	ingrid.bagby@cwt.com
George A. Davis	+1 212 504 6797	george.davis@cwt.com
Peter M. Dodson	+1 202 862 2287	peter.dodson@cwt.com
Christopher R. Mirick	+1 212 504 5733	christopher.mirick@cwt.com
Deryck A. Palmer	+1 212 504 5552	deryck.palmer@cwt.com
Gregory M. Petrick	+1 212 504 6373	gregory.petrick@cwt.com
John J. Rapisardi	+1 212 504 5585	john.rapisardi@cwt.com
Andrew M. Troop	+1 212 504 6760	andrew.troop@cwt.com

Capital Markets

Charles E. Bryan	+1 202 862 2212	charlie.bryan@cwt.com
Michael S. Gambro	+1 212 504 6825	michael.gambro@cwt.com
Karen B. Gelernt	+1 212 504 6911	karen.gelernt@cwt.com
Anna H. Glick	+1 212 504 6309	anna.glick@cwt.com
Stuart N. Goldstein	+1 704 348 5258	stuart.goldstein@cwt.com
Gregg S. Jubin	+1 202 862 2485	gregg.jubin@cwt.com
Henry A. LaBrun	+1 704 348 5149	henry.labrun@cwt.com
Robert O. Link	+1 212 504 6172	robert.link@cwt.com
Lisa J. Pauquette	+1 212 504 6298	lisa.pauquette@cwt.com
Frank Polverino	+1 212 504 6820	frank.polverino@cwt.com
Patrick T. Quinn	+1 212 504 6067	pat.quinn@cwt.com
Y. Jeffrey Rotblat	+1 212 504 6401	jeffrey.rotblat@cwt.com
Jordan M. Schwartz	+1 212 504 6136	jordan.schwartz@cwt.com
Robert L. Ughetta	+1 704 348 5141	robert.ughetta@cwt.com
Neil J. Weidner	+1 212 504 6065	neil.weidner@cwt.com

Real Estate

Fredric A. Altschuler	+1 212 504 6525	fredric.altschuler@cwt.com
John J. Busillo	+1 212 504 6312	john.busillo@cwt.com
James A. Carroll	+1 704 348 5116	james.carroll@cwt.com
James Hassan	+1 704 348 5162	james.hassan@cwt.com
Steve M. Herman	+1 212 504 6054	steven.herman@cwt.com
Melissa S. Hinkle	+1 212 504 6972	melissa.hinkle@cwt.com

Alan W. Lawrence	+1 212 504 6332	alan.lawrence@cwt.com
Jeffrey Lee	+1 704 348 5152	jeffrey.lee@cwt.com
Richard Madden	+1 704 348 5337	richard.madden@cwt.com
William P. McInerney	+1 212 504 6118	william.mcinerney@cwt.com
W. Christopher White	+1 212 504 6633	christopher.white@cwt.com
John M. Zizzo	+1 212 504 6431	john.zizzo@cwt.com