CADWALADER

Cadwalader, Wickersham & Taft LLP
New York London Charlotte Washington Beijing

One World Financial Center, New York, NY 10281
Tel 212 504 6000 Fax 212 504 6666
www.cadwalader.com

Clients&FriendsMemo

General Growth Properties Bankruptcy Court Enters Final Order on Cash Collateral, Cash Management, and DIP Financing Issues[1]

May 18, 2009

Our May 11th memo entitled "General Growth Properties Bankruptcy Court Defers Final Ruling on Cash Collateral, Cash Management and DIP Financing Issues" concluded that the ultimate impact of the bankruptcy filings of General Growth Properties, Inc. and its affiliates would depend in large part on how the cash collateral and DIP Loan issues were resolved. On May 13th, Judge Allan L. Gropper, the U.S. Bankruptcy Judge before whom these bankruptcies are pending, entered final orders on the pending cash collateral, cash management and debtor-in-possession financing motions. Those orders leave fully intact the basic principles of structured finance.

Cash Management, Cash Collateral and Debtor-in-Possession Financing

The Debtors had proposed in the original cash collateral motion to continue their prepetition cash management practices. Those practices involved upstreaming all the income of GGP's regional shopping center subsidiaries (the "Project-Level Subsidiaries") into a single, commingled operating account (the "Main Operating Account") out of which GGP paid its subsidiaries' expenses and made intercompany loans to affiliates in need of cash. GGP proposed that a Project-Level Subsidiary making a loan be given an administrative claim in the bankruptcy case of the affiliated borrower. Further, GGP proposed to provide adequate protection of the related CMBS lenders' cash collateral by granting the CMBS lender a replacement lien on such intercompany loans. GGP also proposed to pay current interest on the CMBS debt at the non-default, contract rate and to pay all property taxes relating to the Project-Level Subsidiaries.

As part of the original cash collateral motion, GGP also sought approval of a debtor-in-possession loan (the "Original DIP Loan") to GGP and to GGP Limited Partnership that would be guaranteed by the Project-Level Subsidiaries and secured with second liens on substantially all their assets. As upstream guarantors, the Project-Level Subsidiaries would have received no direct benefit from the Original DIP Loan because the proceeds would have been disbursed to their parent entities.

---

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

However, they arguably would receive an indirect benefit because the parents provide necessary management services to the Project-Level Subsidiaries.

The motions met with strong opposition from some CMBS lenders, who were concerned about the impact these proposals might have on the separateness of the Project-Level Subsidiaries and their assets.

As it turned out, new parties emerged to compete for providing the DIP financing. After negotiating with three potential lenders, GGP selected a lending group composed of Canpartners Investments IV, LLC, Delaware Street Capital Master Fund, L.P., Farallon Capital Management, L.L.C., Perry Principals Investments LLC, and Whitebox Advisors, certain of which are holders of various unsecured notes and bonds of certain of the Debtors, to provide the $400 million term financing. During these negotiations, some of the features concerning the CMBS lenders were eliminated.

The final DIP Loan (the "Final DIP Loan") approved by Judge Gropper did not require any of the Project-Level Subsidiaries whose properties are encumbered by CMBS debt to grant any mortgages or liens or to guarantee the Final DIP Loan. Instead, the collateral package for the Final DIP Loan consisted of a first mortgage on properties that will become unencumbered through application of some of the Final DIP Loan proceeds, as well as a second lien on the Main Operating Account.

In exchange for the Debtors' use of cash collateral and maintenance of the pre-petition cash management system, the Debtors are continuing to pay interest on the CMBS loans at the non-default contract rate and are providing to the CMBS Lenders a replacement lien on the administrative claim arising from the intercompany loans, which are secured by a first lien on the Main Operating Account. The value of these protections to the CMBS Lenders turns in part on the extent to which the cash in the Main Operating Account is spent. The Debtors do not have unfettered use of monies in the Main Operating Account and must comply with certain reporting requirements as well as budgetary constraints. In addition, the CMBS lenders retain the ability to object to the Debtors improper use of cash in the Main Operating Account.

Impact of the Final Orders

The final cash management and cash collateral arrangements in effect turn the Project-Level Subsidiaries into debtor-in-possession lenders secured by administrative claims and first liens on the Main Operating Account. In comparison with the CMBS lenders' prepetition collateral, the post-petition position of the CMBS lenders ironically represents an improvement in situations where the excess prepetition cash flow was not being trapped. The final cash collateral order characterizes the upstreaming of cash as loans rather than a capital distributions and gives the CMBS lenders a replacement lien on the administrative claims arising from the intercompany loans.

Those administrative claims are secured by a first lien on the Main Operating Account. Absent the protections precipitated by the bankruptcy filings, the CMBS lenders would have no claim to the excess cash, which the Project-Level Subsidiaries would be free to dividend to their parents. Moreover, as stated above, the Final DIP Loan does not require the Project-Level Subsidiaries to guarantee the loan or grant pledges on any of their assets.

While the GGP bankruptcy filings of the Project-Level Subsidiaries have troubled many CMBS investors and industry participants, the legal precedents set by the GGP case to date do not undermine the basic principles of structured finance. Indeed, the cash collateral order and the DIP financing order both respect – and reinforce – the separate identities of the Debtors.

The main issue remaining to be addressed in the bankruptcy cases will be GGP's ability to refinance the debt of its Project-Level Subsidiaries.

* * * *

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