

KLH Realty Advisors, LLC

Update to: *CCK Memorandum/General Growth Properties, Inc., et al., Case #09-11977*
June 2, 2009

As indicated in my May 8, 2009 memorandum, I have continued to carefully follow this proceeding. Set forth below is a summary of some of the more significant events which have transpired over the last several weeks.

As we have all discussed, on May 14, 2009, Judge Gropper ruled to approve \$400,000,000 of post-petition DIP financing for GGP and granted the Debtor's Motion for the Use of Cash Collateral, allowing the GGP Debtor parties (paraphrasing the judge's comment from the bench) to "use the cash of its subsidiaries...." in its overall post-petition operations. This latter, a highly contested issue by the secured creditors of the SPE's, is in direct contravention of the concept of the bankruptcy-remote SPE's which were purportedly structured to hold the income stream from the mortgaged properties for the benefit of the secured lenders. While the judge did seem to attempt some appeasement of the secured lenders by granting them lien positions with respect to the "centralized" accounts, I am also advised that he made certain remarks from the bench which might indicate that he is not going to be prospectively inclined to rule favorably for the lenders in related matters. For example, one article which summarized the proceedings referenced a remark by Judge Gropper that he took "exception" to the *amicus* brief filed jointly by the Commercial Mortgage Securities Association and the Mortgage Bankers Association relative to the inclusion of the 160+ SPE's in this jointly administered case.

While I personally do not think that any of this bodes well for the ING Clarion Capital Motion to Dismiss discussed in my previous memo, five additional motions to dismiss as to the SPE borrowers have been filed in the interim. They are:

- (a) Motion of Wells Fargo Bank, N.A., as to the cases of Faneuil Hall Marketplace, LLC and St. Louis Galleria, LLC (Docket #0429, www.kccllc.net, Case #09-11977);
- (b) Motion of FRM Company, Inc., as to the case of Fox River Shopping Center, LLC (Docket #0627);
- (c) Two motions of Metropolitan Life Insurance Company as to the cases of (i) Providence Place, LLC and Rouse Providence LLC (Docket #0629) and (ii) Howard Hughes Properties, 10000 West Charleston Boulevard, LLC, 9901-9921 Covington Cross, LLC and 1120/1140 Town Center Drive, LLC (Docket #0630); and
- (d) Motion of Metropolitan Life Insurance Company and KBC Bank, N.V. as to White Marsh Mall, LLC, White Marsh Mall Associates, White Marsh Phase II Associates and White Marsh General Partnership (Docket #0631).

As of today's docket, all of these motions, including that of ING Clarion Capital, are scheduled to be heard at 9:30 am on June 17, 2009, with objections due on June 8, 2009.

The types of mortgage debt, as well as the basis argued for the dismissals, represent an interesting cross-section on this subject. The borrowers are all SPE's, with the exception of c(ii)—the Howard Hughes-Summerlin Properties. Some of the debt is first mortgage SPE debt; however, in the case of c(i), Met Life has both first mortgage SPE debt and mezzanine SPE debt. In the case of Fox River Shopping Center, LLC, (b), FRM Holding Company, Inc. predicates much of its argument for a "bad faith" filing on the termination of the independent directors and that a filing in the absence of unanimous consent by the SPE directors is not authorized under its organizational documents. The Met Life/KBC Bank position is particularly interesting as the \$187m secured position is split into Note A-1 (\$137m) held by Met Life and Note A-2 (\$50m) held by KBC Bank. This case is further complicated by the fact that White Marsh Mall, LLC (purportedly an SPE) owns 50% of the partnership interests in each of White Marsh Mall Associates and White Marsh Phase II Associates (also purportedly SPE's), which, each, in turn own 50% of the White Marsh General Partnership (yet, another SPE), which I think (but am not sure) holds the fee interest in the real property.

If you are finding this confusing, I have made my point—think of how the judge is going to feel hearing all of this on the same day. While it is risky to predict how a court might rule, I question whether Judge Gropper will be inclined to dismiss any of these individual entity filings as he could then have to "cherry-pick" his way through the other 145-150 entities, thereby greatly diminishing the prospect of overall reorganization for GGP. Having spent some time looking at the organizational charts in this matter, when you get right down to it, the underlying real estate (SPE entity or not) is all there is! Absent the ability to consolidate and deploy the real property assets and the ensuing income streams, it would appear that GGP has few other sources from which to craft an effective re-organization plan. We should also not be surprised if some of these get "kicked-over" to another date—the Debtor now has 6 motions to answer by Monday and can easily get an extension. It is also, of course, in the Debtor's best interest to stretch these motions out for as long as possible—the longer the entities are in the proceeding, the more cash streams up to the parent entities under the Cash Collateral Order.

Finally, we will defer to another day the discussion as to whether many of these entities were ever truly stand-alone and "bankruptcy remote", other than within the "four corners" of their organizational documents. To suggest that an LLC, which owns a mortgaged shopping center, which is owned by another LLC, which has pledged its equity in the center's owner to secure mezzanine financing (often from the same lender), which ultimately is serviced from the cash flow of the underlying shopping center, is "remote", is to suggest that a tiered marshmallow cake will not collapse into itself on a 100-degree day. As practically every REIT and institutional multi-property owner of my experience employed variations on this same structure, I must reiterate that the outcome of this matter might likely be the end of "life as we know it", dramatically affecting the ability of such parties to secure non-recourse financing well into the future.

[CCK Memorandum, June 2, 2009]