

2nd Update to: CCK Memorandum/General Growth Properties, Inc., et al., Case #09-11977
July 29, 2009

As you know, the Motions to Dismiss of the various Property Lenders in this matter were heard by the Court on June 17 and June 24, 2009 and the Post-Hearing Memoranda of the parties in interest were filed in the several-week period thereafter. As of today's docket, the judge has not yet ruled in these highly publicized matters.

Nonetheless, the docket has moved on and yesterday, July 28, 2009, the Court heard the *Debtor's Motions Pursuant to Section 1121(d) of the Bankruptcy Code Requesting Extension of Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereto (Docket #0945, www.kccllc.net, Case #09-11977)*. In this motion, the Debtor had petitioned the Court for extension of the 120-day exclusivity period (that is, the period during which the Debtor has the exclusive right to file a reorganization plan) to February 26, 2010 and the period for solicitation of acceptances to April 23, 2010. There were 7 objections and 2 joinders filed in this matter by the objecting lenders, including Prudential, Metropolitan Life, TIAA and Northwestern Mutual. Judge Gropper apparently ruled from the bench in this instance, signing the proposed Order attached by the Debtor to its pleading with virtually no changes (he did add a provision for a Status Conference, to be held in approximately 120 days, on the Debtor's progress in plan formulation).

Sometimes these things sneak up on you. Extension of exclusivity is of one of those matters that won't usually get a lot of attention except from the bankruptcy practitioners—it is generally considered to be administrative in nature and causes eyes to glaze over even among more bankruptcy-savvy business people. On the surface, that would seem to be the case here as well—unless one has read the Objections which were filed and, most importantly, the Debtor's Omnibus Reply to those Objections, found at *Docket #1097*.

The secured lenders' objections generally centered on the premise that the respective debtors were single-purpose entities, each having its own mortgage debt, and, as such, were not sufficiently complex cases to warrant the proposed six-month extensions. Clearly, the Judge was not inclined to give much credence to these arguments. The Debtor, on the other hand, had and took advantage of a wonderful opportunity.

In a previous memo, I had raised the discussion as to whether the GGP SPE's were ever truly "bankruptcy remote" other than within the "four corners" of their organizational documents. The Debtor expounds on this most effectively, saying:

"As almost every lender has acknowledged, the property level Debtors' properties likely have equity value. The equity holders of these properties- ultimately the creditors and equity holders of the upper tier entities- have an interest in the comprehensive restructuring of all of the Debtors. The property lenders cannot now feign indignation that these cases involve more than just their own mortgages. All knew of the comprehensive, total enterprise structure into which they were lending. These lenders' expectations were that there was something more here than a mere single loan transaction, and their attempts to now disassociate themselves from the integrated enterprise into which they made their loans ring hollow." (emphasis added)

In further articulating its Reply to the lenders' objections, GGP substantively lays out its plan to consolidate all of the SPE debtors into a single reorganization plan, stating, in part:

"If the Debtors proceeded as several of the objectors suggest and filed separate plans of reorganization for each of the shopping centers..., they would have to file more than one disclosure statement and plan every working day of the six-month extension requested. The Debtors have no intention of bombarding the Court with such filings, wasting millions of dollars in professional fees in the process, and allowing these cases to devolve into chaos. Doing so would squander the opportunity to permanently fix the capital structure of the entire enterprise and would fail to maximize value. Rather the Debtor's goal is to propose a single plan of reorganization that will address each separate Debtor, comprehensively restructure all secured and unsecured debts across all entities and allow the prompt emergence of a recapitalized, integrated enterprise—consistent with the manner in which the Debtors' business operated successfully for years prepetition."

In summary, the Debtor has used a lower profile proceeding, almost ministerial in nature, to put a definitive statement of its intention on the record *for the first time* and, given the absence of any judicial comment, caveat or limitation in the executed Order, would appear to have more or less constructively gotten the Court's "blessing" to proceed toward consolidation, with a six-month free pass to get there. In my view, the potential significance of this cannot be ignored.

At the risk of being trite, the "fat lady" has not yet sung, but she is definitely in the house and warming up in the wings.