



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re

MERUELO MADDUX PROPERTIES,
INC., et al.,

Debtor.

)
) Case No. SV 09-13356-KT
)
)
) Chapter 11
) (Jointly Administered)
)
) **MEMORANDUM ON DEBTORS' MOTION**
) **FOR ORDER DETERMINING THAT THE**
) **DEBTORS ARE NOT SUBJECT TO**
) **PROVISIONS APPLICABLE TO ENTITIES**
) **WITH SINGLE ASSET REAL ESTATE**
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)
) DATE: May 21, 2009
) TIME: 2:00 p.m.
) PLACE: Courtroom 301
) 21041 Burbank Blvd.
) Woodland Hills, CA 91367
)
)

On March 26 and 27, 2009, Meruelo Maddux Properties, Inc. ("MMPI") and 53 entities related to MMPI filed for protection under chapter 11 of the Bankruptcy Code. Pursuant to the court's order of April 7, 2009, all 54 cases are jointly administered under the MMPI case, number 09-13356 (collectively, the "Debtors").

The Debtors are entities that own or have owned real property or entities that provide services to the debtor entities that own real property. Certain of the properties are pledged as collateral for loans to their respective debtor owners. Two lenders, who together claim interests in property of three debtor entities, filed motions seeking a determination from the court that those debtor entities are subject to the single asset real estate provisions of 11 U.S.C. §§ 101(51B) and 362(d)(3). Decisions pending in those motions will be entered approximately, concurrently herewith. Other lenders have threatened to file similar motions.

The instant motion is brought by the Debtors who seek an order determining that none of the Debtors are subject to the single asset real estate provisions of the Bankruptcy Code. At least 11 oppositions and joinders in the oppositions have been filed in response thereto. The Official Committee of Unsecured Creditors (the "OCC") supports the Debtors' position.

The matter has been fully briefed and can be determined on the pleadings. The court does not require oral argument.

As set forth in more detail below, the court concludes that the organizational history of the Debtors, their shared operations, and the other factors listed below support the relief sought in the Debtors' motion.

DISCUSSION

Consolidated Nature of the Debtors' Business Affairs

The facts set forth herein are either undisputed or constitute findings of this court based on the evidence provided in various declarations, testimony, and undisputed documentation before the court.

MMPI and the 53 other debtor entities currently before this court are part of a large, interrelated business enterprise that has functioned on the present model since MMPI's founding in 2006. The business develops, redevelops, and owns industrial, commercial, and multi-unit residential properties in downtown Los Angeles and other urban markets in Southern California.

MMPI is a publicly traded company. At the time it was formed in 2006 to hold an initial public offering ("IPO"), the predecessor related and affiliated entities owned, leased with rights to purchase, and had rights to buy approximately 52 development, redevelopment, and stabilized projects. The business model operated in essentially the

same way both before and after the IPO.

The court will not attempt to repeat, catalogue, or expound on each and every piece of evidence offered to demonstrate the “one enterprise,” consolidated nature of the Debtors’ business. However, most of that evidence is summarized by or included in the following list:

- (1) consolidated cash management system;
 - (a) deposits into individual debtor accounts swept into a single concentration account;
 - (b) payment of expenses of each debtor from those commingled funds;
- (2) historical use of funds for benefit of overall enterprise;
- (3) consolidated internal management team;
- (4) consolidated business operations;
- (5) vertically integrated operations;
- (6) enterprise-wide facilities and programs (e.g., CALPERS and CURE);
- (7) use of proceeds from loan to property-level debtor in connection with IPO;
- (8) use of proceeds from loan to property-level debtor in connection with other projects;
- (9) financial statements and other required Securities and Exchange Commission documents filed on a consolidated basis;
- (10) tax returns filed on a consolidated basis;
- (11) marketed as a unified enterprise in connection with the IPO;
- (12) MMPI and Meruelo Maddux Properties, LP (“MMPLP”) guaranties;
- (13) cross-collateralized loans;
- (14) single auditor and tax advisor;
- (15) single annual report.

The court does not believe that the sophisticated commercial lenders involved in these cases were not aware of the consolidated nature of these Debtors' business affairs or that such awareness was not part of the lenders' decision-making process in extending credit to the individual borrowers.

Single Asset Real Estate Provisions

Section 101(51B) defines "single asset real estate" as follows:

"[R]eal property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto."

Each element must be met to be considered a single asset real estate debtor, i.e., (1) the debtor must have real property constituting a single property or project, other than residential real property with fewer than 4 residential units; (2) which generates substantially all of the gross income of a debtor; and (3) on which no substantial business is being conducted other than the business of operating the real property and activities incidental thereto. In the Matter of Scotia Pacific Company, LLC, 508 F.3d 214, 220 (5th Cir. 2007).

A debtor with more than one piece of real property can be determined to be a single asset real estate debtor if the properties constitute a "single project." In order to be considered a single project, "the several distinct properties involved [must be] all linked together for a common purpose" or "operated together to serve a common purpose." In re The McGreals, 201 B.R. 736, 742-743 (Bankr. E.D. Penn. 1996).

If a debtor is determined to come within the single asset real estate provisions of section 101(51B), a lender on that real estate can seek relief under section 362(d)(3) which requires the debtor, on a relatively short schedule, to file a plan of reorganization or commence payments at the non-default rate. The generally acknowledged purpose of these provisions is to keep single asset real estate from languishing in the courts and force the debtors to push the case, by action or inaction, to conclusion. The hallmark of a single asset real estate case, at least in theory, is that the relevant considerations with which a debtor must come to terms are limited by the uncomplicated nature of the asset it holds.

Viewed as a whole enterprise, the Debtors own multiple pieces of real property or real estate projects in several diverse locations and are not properly subject to the single asset real estate provisions. The Debtors currently own approximately 52 real estate projects of which: (1) 26 generate income through operations and are

encumbered by consensual liens; (2) 4 do not generate income through operations and are encumbered by consensual liens; and (3) 22 are not encumbered by consensual liens. Of the properties not encumbered by consensual liens, 10 generate income through operations. These properties and projects are located in various places including downtown Los Angeles, Sylmar, Barstow, Commerce, and Covina. MMPI, MMPLP, Meruelo Maddux Construction, Inc., Meruelo Maddux Management, LLC, and Meruelo Maddux Ventures, LLC do not own any real property.

Several debtors own more than one piece of real property. Although more than one piece of real property can constitute a single project within the meaning of section 101(51B), that determination as to any particular debtor is subject to dispute. In the case of Alameda Produce Market, LLC, this court has determined that the real property holdings of this debtor are not a "single project." A separate memorandum and order thereon deciding Cathay Bank's single asset real estate motion on Alameda Produce Market, LLC has been or will be entered approximately concurrently herewith. Others of the Debtors who own multiple pieces of real property are:

Merco Group – 1500 Griffith Avenue, LLC (two properties with different lenders);

Merco Group, LLC (two properties with different uses and entitlements, separate loans);

Merco Group – Little J, LLC (two properties; one encumbered, one not encumbered; alleged different development projects);

Merco Group – Southpark, LLC (four properties; alleged different development projects);

Meruelo Farms, LLC (two properties with different lenders);

Merco Group – 620 Gladys Avenue, LLC (seven properties);

Merco Group – 4th Street Center, LLC (three buildings; alleged two separate projects);

Meruelo Maddux Properties – 2131 Humboldt Street, LLC (two or three projects, one encumbered).

Even assuming that some of the Debtors in the instant matters, when considered in isolation, would fall within the ambit of section 101(51B), the consolidated, inter-related business operations of the Debtors are complex and argue against that characterization. To rule otherwise would inappropriately elevate form over substance.

The Debtors contend and the court finds it reasonable to presume that there is historical synergy in the whole enterprise that benefits the holdings of each individual debtor and that effective reorganization in these chapter 11 cases requires a unified

approach in developing a plan or plans to present for confirmation.

Other Substantive Relief Available

It is important to recognize that a single asset real estate designation is only one avenue of relief available to a creditor. A lender who cannot obtain relief under section 362(d)(3) may seek relief from stay under sections 362(d)(1) and (d)(2) for cause shown or if such lender is not adequately protected or the debtor has no equity or ability to reorganize its affairs. A lender can seek dismissal or conversion if a debtor is unfit to manage its affairs or does not timely move the case to conclusion. These protections are not lost if one or all of the Debtors are not single asset real estate cases.

It is also important to recognize that denial of single asset real estate remedies is not a de facto substantive consolidation of the Debtors' cases. As discussed above, many if not most of the Debtors do not meet the requirements for a single asset real estate case. In other words, in those cases, there would be no grounds for asserting remedies under section 362(d)(3) even if there were no connections between and among the Debtors.

The Debtors, both individually and working together as a consolidated business enterprise, have the burden of moving expeditiously towards reorganization and proposing a confirmable plan or plans. By way of example raised in prior hearings before this court, figuring out how to provide effective adequate protection to multiple lenders across individual Debtor boundaries is the Debtors' burden.

Complexity and the state of the credit market are not free passes for delay by the Debtors. However, it is also worthy of note that there is apparent forward movement by the Debtors in finding buyers for certain of the properties or projects.

Based on the foregoing, the motion should be GRANTED. A separate order will be entered concurrently herewith.

IT IS SO ORDERED.

Dated: JUN 17 2009


KATHLEEN THOMPSON
U.S. BANKRUPTCY JUDGE