

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 MOTION BY BANK**
) **OF AMERICA TO DECLARE MERCO**
) **GROUP- SOUTHPARK, LLC AND**
) **MERUELO MADDUX PROPERTIES-**
) **760 S. HILL STREET, LLC "SINGLE**
) **ASSET REAL ESTATE" CASES**
) **PURSUANT TO 11 U.S.C. § 101(51B)**
) **AND IMPOSE THE REQUIREMENTS OF**
) **11 U.S.C. § 362(d)(3) IN ACCORDANCE**
) **THEREWITH**
)
) DATE: May 21, 2009
) TIME: 2:00 p.m.
) PLACE: Courtroom 301
) 21041 Burbank Blvd.
) Woodland Hills, CA 91367
)

Bank of America ("BofA") seeks a determination that Merco Group – Southpark, LLC ("Southpark LLC"), the debtor in case no. 09-13407-KT, and Meruelo Maddux Properties – 760 S. Hill Street, LLC ("760 S. Hill LLC"), the debtor in case no. 09-13363-KT, are "single asset real estate" cases within the meaning of 11 U.S.C. § 101(51B). BofA also seeks to impose the requirements of 11 U.S.C. § 362(d)(3) that would follow from such determination. BofA is a creditor of Southpark LLC and 760 S. Hill LLC, which obligations are secured by liens on certain real property assets held by those debtors. BofA is also a creditor of Meruelo Maddux Properties, Inc. ("MMPI"). MMPI does not own any real property. The motion is opposed by the Debtors and the Official Committee of Unsecured Creditors (the "Committee").

The facts on which this court bases its decision are undisputed. The matter has been fully briefed and can be determined on the pleadings. The court does not require oral argument.

Southpark LLC and 760 S. Hill LLC are two of 54 related debtor-entities that filed for protection under Chapter 11 on March 27, 2009. Pursuant to the court's order of April 7, 2009, all 54 cases are jointly administered under the MMPI case (case number 09-13356) (the "Debtors").

Section 101(51B) defines "single asset real estate" ("SARE") 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 SARE 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 SARE 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).

Southpark LLC Real Estate

Southpark LLC owns four pieces of real property covering a total of approximately 4.7 acres in downtown Los Angeles. The properties are not all adjacent or contiguous to one another.

One property is subject to a purchase and sale agreement with an option to purchase a second of the four parcels. Of the two remaining parcels, the Debtors assert that they plan to develop two multi-story apartment buildings and an event center. Three of the four properties are currently leased out to a tenant who runs parking lots on the premises.

The Debtors assert and BofA does not deny that each of the loan documents provide for release prices for each of the four properties and each property was separately appraised by BofA.

760 S. Hill LLC Real Estate

760 S. Hill LLC owns 0.3 acres of land at the corner of West 8th Street and South Hill Street in downtown Los Angeles which is improved with a 92-unit apartment building known as Union Lofts. The ground floor has commercial space that is intended for a restaurant that can be sold separately. The Debtors state that they are looking for a tenant and are considering owning the restaurant.

Analysis of SARE Considerations

The court agrees with the Debtors that the four pieces of real property owned by Southpark LLC are not a single project or a single asset. The properties have been treated as separate assets in the past and are not all contiguous or adjacent. There is no evidence of a unified plan of development. Leasing three of the parcels out to a parking lot operator on a temporary basis while the Debtors pursue development or sale is not a "common purpose" for SARE analysis. Operating or holding real estate for profit is not a sufficient "common purpose" to convert which is otherwise a collection of real property assets into a "single project."


760 S. Hill LLC appears to have the characteristics of a SARE case. However, the court is persuaded by the Debtors' argument that each of them are part of a whole business enterprise to which it would not be appropriate to apply the SARE provisions of the Bankruptcy Code. The Debtors incorporate this argument from their separately-filed motion on the issue. Similarly, the court incorporates herewith its memorandum on the Debtors' motion in support of the conclusion that BofA's motion should be denied, not only as to Southpark LLC but also as to 760 S. Hill LLC.

Based on the foregoing, BofA's motion is DENIED. A separate order will be entered concurrently herewith.

IT IS SO ORDERED.

Dated:

JUN 1 " 2009



KATHLEEN THOMPSON
U.S. BANKRUPTCY JUDGE