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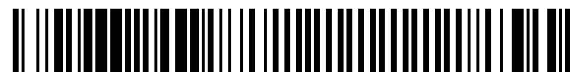
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
General Growth Properties, Inc., et al.	Case No. 09-11977 (ALG)
Debtors.	(Jointly Administered)

POST-HEARING MEMORANDUM OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN OPPOSITION TO THE MOTIONS TO DISMISS OF ING CLARION CAPITAL LOAN SERVICES LLC, WELLS FARGO BANK, N.A., METROPOLITAN LIFE INSURANCE COMPANY, AND KBC BANK N.V.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The Official Committee of Unsecured Creditors (the "Committee") of General Growth Properties, Inc. ("GGP") and its affiliated debtors and debtors in possession (collectively, with GGP, the "Debtors"), by and through its undersigned counsel, hereby files this supplemental brief in opposition to the motions to dismiss the chapter 11 filings of certain debtors (the "Debtor-Subsidiaries") filed by ING Clarion Capital Loan Services LLC's ("ING"), Wells Fargo Bank, N.A. as Trustee ("Wells Fargo"), Metropolitan Life Insurance Company ("MetLife") and KBC Bank N.V. ("KBC") (collectively, "Movants"). In further support of its opposition, the Committee respectfully submits as follows:

INTRODUCTION

1. In examining the good faith of the Debtor-Subsidiaries' chapter 11 filings, the Court should look to the surrounding circumstances as a whole. *In re Con Am Grandview Assocs., L.P.*, 179 B.R. 29, 32 n.3 (S.D.N.Y. 1995). In the only two cases of which we are aware in which a creditor challenged the good faith of a subsidiary's chapter 11 filing without disputing the good faith of the parent's filing, the courts have rejected the challenge after looking at whether it was "sound business practice" for the parent and subsidiary to file together. *Heisley v. U.I.P. Engineered Prods. Corp.* (*In re U.I.P. Engineered Prods. Corp.*), 831 F.2d 54 (4th Cir. 1987); *In re Mirant Corp.*, No. 03-46590, 2005 WL 2148362 (Bankr. N.D. Tex. Jan. 26, 2005). This approach furthers the "general policy that the entire administration of an estate should be centralized in a single reorganization court." *Duggan v. Sansberry*, 327 U.S. 499, 510-11 (1946). The record evidence establishes that it made business sense for the Debtor-Subsidiaries to file alongside their corporate parents. This is true for at least two reasons.

2. First, the parent companies depend on their property-level subsidiaries for their revenue, and the subsidiaries' filing were necessary to protect that revenue. Eight of the Debtor-

Subsidiaries owe mortgage debt that will come due within the next five years.[1] The remaining three owe mortgage debt with an anticipated repayment date that is either within that period or which has already passed, and on each of these mortgages, passing that date without repaying the principal triggers a higher interest rate and a "cash trap" under which the revenue from the property is diverted to pay down the mortgage principal.[2] Under either arrangement, the effect of not paying is the same in the only respect that matters here: GGP no longer earns revenue from the mall. Filing for chapter 11 afforded the subsidiaries some hope of avoiding the worst consequences of defaulting or of passing the anticipated repayment dates.[3] The subsidiaries' filings thus protected the Debtors' business as whole, so it was sound business practice.

3. Second, the business operations of the parent entities and the project-level subsidiaries are integrated. *See* Decl. of James Mesterharm of April 16, 2009 at 8-11; Decl. of James Mesterharm of June 16, 2009 at 4-9; Committee Opp. to ING Motion at 2-3. The services

[1] As to ING: The Park City Center loan matures on October 1, 2010. June 17, 2009 Joint Ex. 15 at 10. The Washington Park Mall loan matures on April 1, 2014. June 17, 2009 Joint Ex. 21 at 10. The Regency Square Mall loan matures on July 1, 2010. June 17, 2009 Joint Ex. 16 at 9. The Stonestown Mall loan matures on September 1, 2011. June 17, 2009 Joint Ex. 18 at 12 & 15. The Fashion Place loan matures on October 5, 2010. June 17, 2009 Joint Ex. 13 at 10. As to Well Fargo: The Faneuil Hall Marketplace Loan matures in April 2013. June 17, 2009 Joint Ex. 12 at 13. The St. Louis Galleria loan matures in July 2010. June 17, 2009 Joint Ex. 17 at 10. As to Met Life: The Providence Place loans mature on March 11, 2010. June 24, 2009 MetLife Ex. 1 at 10 & Ex. 7 at 10. The Hughes-Summerlin loan matures on March 1, 2011. June 24, 2009 MetLife Ex. 16. The White Marsh loan matures on September 4, 2010. June 24, 2009 MetLife Ex. 12.

[2] The loan on the Valley Plaza shopping center matures on July 11, 2033 (June 17, 2009 Joint Ex. 19 at 10), and has an anticipated repayment date of July 11, 2012 (*id.* at 2). The Visalia Mall loan matures on July 11, 2028 (June 17, 2009 Joint Ex. 20 at 10) and has an anticipated repayment date of January 11, 2010 (*id.* at 2). The Tucson Mall loan matures on October 11, 2033 (June 17, 2009 Joint Ex. 14 at 11) and has an anticipated repayment date of October 11, 2008 (*id.* at 2).

[3] As detailed in the Debtors' post-hearing briefing, Movants offered no evidence to challenge the business judgment that the project-level subsidiaries exercised in determining to file for bankruptcy protection. Specifically, Movants do not challenge the assessments made by the Debtor-Subsidiaries' boards and their advisors regarding when, if ever, any rebound in the commercial real estate financing market will occur nor did Movants present testimony from anyone with decision-making authority to show that the Movants would have refinanced, extended, or otherwise not enforced the default provisions in the loan agreements for the loans at issue. Without repeating each of those arguments, the Committee adopts the arguments set forth in Debtors' post-hearing briefing, filed contemporaneously with the Committee's brief, by reference.

that the parent entities provide—including day-to-day site management, cash management, maintaining national leasing relationships, and capital infusion for both maintenance and development—are critical to the property-level subsidiaries' success. Decl. of James Mesterharm of June 16, 2009 at 8-9. Movants did not and could not dispute this. Indeed, the Movants themselves acknowledge the importance of the parent entities' role in providing these services in their own evaluation of the loans made to the Debtor-Subsidiaries. *See, e.g.*, June 24, 2009 Hr'g Tr. at 117:18-24 (noting that MetLife would look to GGP and "how successful they were" in evaluating the loans to the property-level subsidiaries at issue in the motions to dismiss); *id.* at 142:18-143:19; 145:15-24 (MetLife downgraded its rating for the Providence Place loan in part because of the "deteriorating financial capacity" of GGP).

4. The businesses of the parents and the subsidiaries would have suffered without chapter 11 protection, so it made business sense to file the petitions as to all of those that did file, including the Debtor-Subsidiaries. Movants' first response at trial was to argue that *In re Mirant* and *In re U.I.P.* should simply be ignored when the loans at issue are non-recourse. June 17, 2009 Hr'g Tr. at 20-21. There is no basis in the cases for that exception. Their standard asks whether it made business sense for the debtors to file together, not whether the creditors would approve their decision to file.

5. Movants' only other argument was that some third-party providers might be available to manage the malls instead of GGP. *Id.* at 30-31. This was on the theory that if a replacement management company could be found to manage a particular subsidiary, it would not be sound business practice for that subsidiary to file for chapter 11 simply to preserve its management relationship with its parent. But as the Committee already emphasized in its opposition (*see* Committee Opp. to ING Motion at 10-11), one of the crucial services provided to

the malls by their parents was infusing capital for maintenance and improvement. No management company that is paid a fee for managing a mall, but which does not own that mall, would invest funds in the mall – a fact that ING's own witness admitted at trial. *See* June 17, 2009 Hr'g Tr. at 164 ("Q. A third-party management company does not put its own capital into a retail shopping center client, correct? A. I would not think so, no. Q. And a third-party management company doesn't pay for development or construction costs at a property either? A. An owner's responsibility, not a manager, not a third-party manager[']s responsibility."). Without that investment, the malls' business would suffer, so it made business sense for the property-level subsidiaries, including the Debtor-Subsidiaries, to file for chapter 11 alongside their parents.

CONCLUSION

11. For the foregoing reasons and for the reasons stated in its earlier-filed oppositions, the Committee respectfully requests that the Court deny the Movants' motions to dismiss.

Respectfully submitted,

/s/ Michael S. Stamer

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