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KBC Bank N.V.*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: :
GENERAL GROWTH PROPERTIES INC., *et al.* : Case No. 09-11977 (ALG)
: :
Debtors. : (Jointly Administered)
: :
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**METROPOLITAN LIFE INSURANCE COMPANY’S AND KBC BANK N.V.’S
MOTION IN LIMINE TO EXCLUDE DEBTORS’ TRIAL EXHIBIT NO. 2**

Metropolitan Life Insurance Company (“Metlife”) and KBC Bank N.V. (together with Metlife, “Movants”) objected in writing to Debtors’ Trial Exhibit No. 2 (“Summaries of Subsidiary Debtors Relevant to Metlife’s Motion to Dismiss”) (the “Summary”) prior to the June 24, 2009 hearing because although it was listed in Debtors’ exhibit list, Movants were not provided with a copy to review. The Debtors did not refer to the Summary at the hearing or attempt to offer it into evidence. After the close of the evidence, Debtors’ counsel finally provided Movants’ counsel with a copy of the Summary. The parties reported to the Court that Movants’ counsel would review the Summary and report back to Debtors’ counsel if there was a continuing objection. The Summary consists of a data sheet and separate organization chart related to each of the Metlife Debtor groups that own and operate the Providence Place Mall, the



White Marsh Mall and the Hughes-Summerlin Properties.¹ After reviewing the Summary, Movants' counsel concluded (and advised Debtors' counsel) that the data sheets should be excluded because they do not accurately reflect or summarize the evidence in the record (Movants do not object to the organization charts). In particular, the loan to value ratio ("LTV") in each of the data sheets related to the Mezzanine Loan, the White Marsh Loan, and the Hughes-Summerlin Loan is not reliable or supported by the record.

For example, the Debtors' data sheet related to the White Marsh Loan contains an LTV of 91.4%, yet there was no evidence offered by Debtors or provided to Metlife that supports that LTV calculation or explains the basis for it.² The evidence introduced by Movants at the hearing actually places the current LTV at approximately 79%. *See* Movants' Ex. 81 (2009 Mortgage Rating).

Similarly, the Summary contains an LTV calculation of 94.1% concerning the Mezzanine Loan based on total debt of \$406,251,904.50, yet the Supplemental Declaration of Thomas Nolan dated June 23, 2009 that was offered by Debtors in lieu of Mr. Nolan's direct testimony states, in

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Omnibus Reply of Metropolitan Life Insurance Company to Debtors' Memorandum of Law in Opposition of the Official Committee of Unsecured Creditors to Motions to Dismiss Pursuant to Section 1112(b) of the Bankruptcy Code* dated June 19, 2009 [Docket No. 813].

² Debtors attempted to introduce Dx. Ex. 48, a summary LTV calculation for White Marsh Mall, that like Exhibit 2, was prepared by counsel. It too has an LTV of over 91%. Movants objected to this exhibit because there was no underlying support for the calculation. Debtors then withdrew the exhibit. It is not in evidence.

part, as follows:

The essential information concerning the properties and individual filing factors can be summarized as follows:

Project Entity	Debtor	Total Debt (12/31/08)	Maturity Date	Filing Factors
Providence Place	Rouse Providence, LLC (mortgage borrower)	\$260,044,221 (mortgage loan)	March 11, 2010	Maturity, other financial considerations
	Providence Place Holdings LLC (mezzanine borrower)	99,151,561 (mezzanine loan)		Cross-default from Rouse Providence, LLC, maturity

Id., ¶ 17. (emphasis supplied). Thus, the “total debt” figure in the third column that Mr. Nolan, Debtors’ “decision maker,” relied upon with respect to the bankruptcy filings here was approximately \$360,000,000, not \$406,000,000 as reflected in the Summary. A figure of slightly less than this \$360,000,000 debt figure was also used by Metlife when it calculated a substantially lower LTV related to the Providence Loan of approximately 74%. *See* Movants’ Ex. 80 (2009 Mortgage Rating).

There is also no showing by Debtors that the LTV calculation appearing in the data sheet contained in the Summary related to the Hughes-Summerlin Loan is accurate or based on documents in evidence or made available to Movants.³

For a summaries or charts of the nature offered now by Debtors to be admissible under Fed. R. Evid. 1006, they must “explicitly ...reflect the contents of the documents they summarize and typically are substitutes in evidence for the voluminous originals.” *United States*

³ Here, the LTV related to the Hughes-Summerlin Loan that is contained in the Summary is 48.6% rather than 53.51% as calculated by Metlife. *See* Movants’ Ex. 82 (2009 Mortgage Rating). Notwithstanding that the two figures are comparable, and reflect the health of the loan, there is still no showing by Debtors’ Summary is reliable or otherwise admissible.

v. Milkiewicz, 470 F.3d 390, 398 (1st Cir. 2006). If the court finds that the data underlying the summary is unreliable or that the underlying documents were not made available, then the court should rule that the proffered summary is inadmissible or strike the evidence. *See Air Safety, Inc. v. Roman Catholic Archbishop of Boston*, 94 F.3d 1, 7 (1st Cir. 1996).

Here, Movants were not provided with all documentary support for the information summarized in the data sheets that are part of the Summary. Debtors simply cannot establish that the information in the data sheets, particularly as it relates to the LTV calculations, is accurate, reliable, or that it is a necessary substitute for “voluminous originals.” Questions of accuracy and reliability are no more evident than with respect to the Providence Place Mall where Thomas Nolan represented in his Supplemental Declaration, filed on the day of the hearing, that he was relying on the same \$360,000,00 debt figure that Metlife used to calculate LTV. Although Debtors’ counsel has advised Movants’ counsel that it does not intend to cite to the data sheets contained in the Summary for support of any of the LTV calculations, these data sheets should nonetheless be excluded. They distort the LTV picture of these loans.

WHEREFORE, for the reasons stated herein, Movants request that the three (3) data sheets related to the Mezzanine Loan, the White Marsh Loan, and the Hughes-Summerlin Loan that are part of the Summary (Debtors Ex. 2) be excluded from evidence.

Dated: New York, New York
July 2, 2009

Respectfully submitted,
GREENBERG TRAURIG, LLP

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ORDER ON MOTION IN LIMINE WITH RESPECT TO DEBTORS TRIAL EXHIBIT 2

Upon the motion (“Motion”) of the Metropolitan Life Insurance Company and KBC Bank N.V. seeking entry of an order excluding Debtor’s Trial Exhibit 2, and due and sufficient notice having been given; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334; it is hereby

ORDERED that the Motion is Granted, and so much of Debtors’ Exhibit 2 consisting of data sheets (property summary pages) at Tabs 1-5 are excluded.

Dated: New York, New York
July __, 2009

Hon. Allan L. Gropper
United States Bankruptcy Judge