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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re: SR REAL ESTATE HOLDINGS, LLC, Debtor	CHAPTER 11 Case No. 13-09784-PB11 REPLY OF FIRST PRIORITY LENDERS TO DEBTOR'S OMNIBUS OPPOSITION TO DACA 2010L L.P.'S MOTION TO DISMISS, TO FIND THAT DEBTOR IS A SINGLE ASSET REAL ESTATE DEBTOR AGAIN AND, ALTERNATIVELY, FOR RELIEF FROM STAY Date: November 4, 2013 Time: 2:30 p.m. Dept: 4, Room 328 Judge: Hon. Peter W. Bowie

[1] First Priority Sargent Ranch Lenders is comprised of the following unconflicted lenders who hold fractional interests in only the First Loan and First Deed of Trust and in no junior loans or liens: Debra Gewertz, Jim Schreader, Gunilla M. Rittenhouse, Los Amigos V, Louis E. Rittenhouse, Trustee, Michael E. Pegler, Janice L. Pegler, Richard Ehrenberger, Ronald P. Elvidge, and Penelope Kuykendall.

First Priority Lenders hereby reply to the Debtor's Omnibus Opposition to the motion of DACA 2010L, L.P. ("DACA") to dismiss this Chapter 11 case with prejudice, find the debtor is a single asset real estate debtor (again) or, alternatively, for relief from the automatic stay ("Motion").

A. CORRECTIONS TO DEBTOR'S FACTUAL ALLEGATIONS

1. No Majority of Record First Loan Holders Ever Agreed to the Debtor's Proposed Global Compromise.

The Debtor alleges that on August 14, 2012, "a majority of 1st TD Holders recorded a Majority Action Affidavit documenting a global compromise that would have ended that tortured history." Although the Debtor is correct that such a document was recorded, the Debtor leaves out a key fact: the so-called majority of lenders who signed the document did not, in fact, hold a majority of record interest in the First Loan and none of them even signed the document under penalty of perjury.

This is a critical omission because Cal. Civ. Code §2941.9 expressly states that "any action taken pursuant to the authority granted in this section is not effective" unless the Majority Action Affidavit is signed under penalty of perjury and includes, among other things, a statement that it is signed by "more than 50 percent of the record . . . undivided interests" in the subject note." (emphasis supplied) In other words, for a "majority vote" to authorize the majority to act on behalf of the entire group of fractional noteholders, that majority must sign under penalty of perjury a statement that they actually hold a simple majority of record beneficial interests in the note.

A cursory inspection of the Majority Action Affidavit#1 ("MAA #1) upon which the Debtor relies proves conclusively that it conferred no such authority at all. See, Debtor's Request for Judicial Notice, Docket #84, Ex. 1, p. 6-7. Instead of asserting that the signatories hold more

than 50% of the record beneficial note interests, as the statute requires, the MAA #1 merely asserts that the signatories hold "more than 50% of the principal amount of the first-priority deed of trust". And instead of making their claim under penalty of perjury, they signed no oath at all.

Moreover, these were not inadvertent omissions or typographical errors. As we now know, at the time MMA#1 was recorded, the 12.6% interest that Tena Collins, one of the signatories, claimed to hold was, in fact, held by Shazara, Ltd., not Ms. Collins. In other words, MAA#1 was fatally defective not just because it failed to contain the proper recitation and oath, but also because an actual majority of record interests had never agreed, and would never agree, to the Debtor's proposed "global compromise".

2. The Ehrenberger Notice of Default Was Not Defective

The Debtor alleges that the Notice of Default recorded by Mr. Ehrenberger was "defective" because it was not authorized by a majority vote. This is false. The Servicing Agreement, signed by one hundred percent of the First Lenders, expressly authorizes the recording of a Notice of Default in the event the note is in default. See, Debtor's Request for Judicial Notice, Docket #84, p. 44, Section 1.G. Also, the Debtor fails to disclose that the Notice of Default was expressly recorded under the authority of Perkins v. Chad Development Corp. (1979) 95 Cal.App.3d 645, 651 [157 Cal.Rptr. 201] ("We hold that where there is more than one beneficiary under a single note and trust deed, in the event of a default, any one of the beneficiaries is empowered to give notice of default and election to sell."). Moreover, a Majority Action Affidavit, signed under oath by a majority of record beneficial interests in the First Loan, ratifying and authorizing the recording of that Notice of Default has since been served and recorded.

In sum, there is not, and never was, anything "defective" about the First Lenders' Notice of Default.

3. There Was Never a Majority to "Thwart"

The Debtor repeatedly claims that a "majority" of First Lenders wanted to proceed with the Debtor's "global compromise" and that they would have had DACA not "thwarted" their plans. However, the only evidence supplied to support this allegation is the MAA#1. As noted above, under Cal. Civil Code §2941.9, the MMA#1 is merely a piece of paper that had absolutely no meaning or effect when it was recorded. On the other hand, there is now a properly executed (under oath), served and recorded Majority Action Affidavit in which 57% of record beneficial interests in the First Loan opposes any such settlement and directs the immediate foreclosure of the property under the First Deed of Trust. This is simply not in dispute.

In short, if anybody is attempting to "thwart" the will of a legal majority of First Lenders, it is the Debtor, not DACA.

4. The First Priority Lenders Only Filed Suit to Resolve The Impasse

The Debtor glosses over the fact that the First Lenders' original suit was for declaratory relief. Instead, they try to focus on a subsequent complaint for damages that was only filed in response to the minority defendants' cross-complaint for damages and which is now moot as a result of the formation of an actual, legal majority voting to foreclose.

Briefly, when they filed their first suit against all interest holders, the First Lenders knew that regardless of whether there was a foreclosure or settlement, there would be disgruntled beneficiaries and, therefore, any title insurance company would need a court judgment binding all beneficial interests.

The filing First Lenders originally argued that in conducting any vote, holders of "conflicted" interests, i.e., those who also held junior interests that would be wiped out by any foreclosure, should be required to abstain from voting on the issue of foreclosure. But after DACA

purchased the Shazara interest, those voting for foreclosure exceeded 57%, thereby making the need for such declaratory relief moot.

Unfortunately (and not disclosed by the Debtor in its statement of facts), the losing minority of First Lenders filed a cross-complaint against the First Priority Lenders alleging that their "informal" fake majority entitled them to recover damages and attorneys fees. Despite demand, they refuse, and continue to refuse, to dismiss the action, even after the Superior Court has ruled that a simple majority vote governs the actions of all.

5. The Debtor Has Shown No Good Faith Toward First Priority Lenders

The Debtor suggests that it has "cooperated" with DACA and, therefore, evidenced its good faith postpetition. At the same time, however, the Debtor has moved to strike all of the First Priority Lenders' opposition on the ground that such lenders' counsel has not filed a 2019 Statement.

First Priority Lenders is simply a name given to several, individual fractional noteholders who for three years have appeared before this court through their counsel, Goodrich & Associates. Since 2010, the First Priority Lenders' counsel has represented their interests in three different bankruptcy cases. In its pleadings in each case, counsel has identified these clients by name and the percentage interest they hold. Notably, the Debtor's counsel has also been involved in those cases over the same three years. There is no mystery about who Goodrich & Associates represents. While Goodrich & Associates will submit a 2019 Statement, it does not believe that demanding one in this case is an act of "cooperation".

6. There Exists No Collective Enterprise for the Benefit of All Original Holders

Perhaps the most remarkable misstatement by the Debtor is that the First, Second and Third Lenders are part of a "collective enterprise for the benefit of all Original Holders." Opposition, p. 4:20-21.

The First Loan carries an interest of 15%. The Second Loan carries an interest of 31%, as does the Third. The First Loan was made in June 2000. The Second Loan was made in November 2000 and funded over the following couple of years. The Third Loan was not made until 2003. The holders of the Second Loan signed an express subordination agreement in favor of the First Lenders irrevocably and permanently subordinating the lien of the Second Loan to the lien of the First Loan.

These facts are not in dispute. The Debtor does not explain how notes of different priorities, interest rates and, most importantly, different funding dates, can possibly be part of a "collective enterprise". Did the Seconds or Thirds ever pay any of their 31% interest to the Firsts? Did the Seconds or Thirds advance a single dime to cure the $1,800,000 tax default and save the property from an imminent tax sale in June of this year? Have the Seconds or Thirds ever offered to buyout the First Lenders' interests, as DACA has done?

Obviously, there is no "collective enterprise". Rather, the Debtor actually sees its relationship with the First Lenders as a one-way street: give up some of the value of the First Lenders' collateral or the Debtor will continue to do everything within its power --- whether or not it is in good faith --- to delay the First Lenders' rightful foreclosure sale.

B. ARGUMENT

1. The Debtor Has Admitted Its Bad Faith

In his declaration in opposition to DACA's motion to dismiss, Norman Adams admits:

> "Under the Consensual Agreement, the 1st TD Holders were to receive the first $37.5 million in proceeds, sharing of additional proceeds until the 2nd TD Holders and 3rd TD Holders received a return of their principal ($18 million)
>
> . . . .
>
> The Debtor commenced this case to pursue a similar compromise which the Debtor believes is supported by 42% in amount and well more than half in number (based on DACA's own calculation) of 1st TD Holders and the vast majority (likely all except for DACA) of the 2nd TD Holders."

Declaration of Norman I. Adams in Support of SR Real Estate Holdings Omnibus Opposition, P¶33 and 53.

In other words, the Debtor is admitting that because it could not get an actual, legal majority to agree with its so-called "Consensual Agreement", it filed Chapter 11 to force such an agreement over the objections of the real majority of interests. Moreover, the Debtor is not just admitting that it is using Chapter 11 solely to change the outcome of a prepetition dispute it lost. Rather, the Debtor is claiming that the very remedy it unsuccessfully attempt to use against the First Priority Lenders --- a majority vote --- cannot be used by the prevailing First Priority Lenders!

Such facts leave no doubt. The Debtor is not claiming it has equity in any property to protect nor employees or vendors to pay. Rather, the Debtor is just a few wealthy investors who are trying to escape not only the consequences of their bad investment decisions but also the outcome of the vote they demanded occur. Using a federal court to manipulate the rules of an investment game, or to tilt the game board in favor of the losing party, is the essence of bad faith. DACA's motion should be granted.

DATED: October 31, 2013

GOODRICH & ASSOCIATES

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