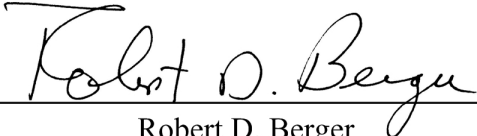




The relief described hereinbelow is SO ORDERED.

SIGNED this 8th day of November, 2013.


Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

BLUEJAY PROPERTIES, LLC
Debtor.

Case No. 12-22680-11

ORDER STAYING APPOINTMENT OF SPECIAL TRUSTEE

NOW on the 16th day of October, 2013, comes on for hearing Debtors Motion to Rescind or Stay the Appointment of Trustee and the responses and/or objections made by Kaw Valley Bank (“KVB”), University National Bank (“UNB”) and Bankers’ Bank of Kansas (“BBOK”). The Debtor appears by and through Tom R. Barnes II and Lee W. Hendricks of Stumbo Hanson, LLP. BBOK appears through its counsel, Arthur S. Chalmers of Hite, Fanning & Honeyman, LLP. UNB appears by and through counsel, Edward J. Nazar for Redmond & Nazar, LLP. KVB appears by and through counsel, Patricia E. Hamilton of Stevens & Brand, LLP. Larkin Excavating, Inc. and John Larkin appear by and through counsel, Ben Swinnen of Swinnen &

Associates. There are no other appearances and none are required.

WHEREUPON, the Court having had an opportunity to review the file, receive evidence in the form of testimony from the Debtor's witnesses, Gina Anderson, Vice President of CBRE, and Travis Maurath of Rental Management Services ("RMS"), review the exhibits admitted at trial and after being otherwise duly advised in the premises finds and orders as follows:

1. By virtue of the Sale Procedure Settlement Agreement approved by the Court on or about July 22, 2013, the Debtor agreed that if no qualifying offers to purchase the Debtor's apartment complex in Junction City, Kansas were received by the close of business on October 7, 2013, and that the parties did not otherwise mutually assent to accept any non-qualifying offer, a Special Trustee was to be appointed. The Debtor had the right under the agreement to request that the appointment of a Trustee be rescinded or stayed if a senior financial analyst for CBRE certifies that a failure to receive qualifying offers was due primarily to current market conditions incapable of being ascertained on the date of the agreement that impacted the value for marketing of the property and if the Debtor demonstrates by clear and convincing evidence that rescinding or staying the appointment of a Trustee is in the best interest of the estate, taking into account current market conditions.

2. Debtor caused its Motion to Rescind or Stay the Appointment of a Trustee on October 1, 2013.

3. The only testimony presented at trial was that of the Debtor's witnesses, Gina Anderson, Vice President of CBRE, and Travis Maurath, a principal of RMS who is managing the Debtor's property.

4. Ms. Anderson testified that there was no way to fully anticipate the impact that recent deployments of military personnel from Fort Riley would have on the Debtor's occupancy rates

at the time that it entered into the aforementioned Sale Procedure Settlement Agreement. She further testified that the fluctuations in the domestic financial markets have been impossible to predict with any certainty and that her nor any of her competitors could have predicted from truly empirical evidence that the interest rates would have increased by over 100 basis points since she initially performed her analysis of the market value of the Debtor's apartment complex.

5. Mr. Maurath testified concerning the management of the Debtor by TICC as debtor in possession as being prudent and in the best interest of the estate. He also testified that the Debtor-in-Possession has preserved the value of the apartment complex by seeing to the immediate maintenance issues and by completing certain necessary landscaping in order to attract tenants and market the property to potential purchasers. Mr. Maurath further provided testimony that the cost of a Trustee performing the management services being provided by the Debtor would more likely than not exceed that which is being charged by the Debtor-in-Possession.

6. The opponents to Debtor's Motion to Rescind or Stay the Appointment of a Trustee presented no evidence to contradict or impeach the testimony from Debtor's witnesses that the market conditions were not predictable nor could they have been known by the Debtor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Debtor has met its burden of establishing by clear and convincing evidence that an unforeseeable change in occupancy and financial markets negatively impacted the value of the Debtor's apartment complex. These factors were beyond the control of the Debtor-in-Possession and have resulted in the strike price not being met.

IT IS FUTHER ORDERED that the Debtor has sustained its burden in establishing by clear and convincing evidence that rescinding the appointment of a special Trustee is in the best

interest of the estate, taking into account the current market conditions.

IT IS FURTHER ORDERED that the Debtor, having engaged a very qualified agent to assist in marketing this property, should proceed with its current effort to sell the property at its current market value. All provisions of the Settlement Agreement regarding the established strike price or deadlines regarding the sale process are suspended, and the provisions for the appointment of a Special Trustee are suspended. The Court directs that if the Debtor does not proceed with efforts to secure a buyer from the six offers currently outstanding, or other any other reasonable offers that come before it, by the first regularly scheduled Chapter 11 docket in January 2014, the Court will approve the appointment of a trustee pursuant to 11 USC § 1104 possessed of full powers of a trustee under the Bankruptcy Code. Further, the Debtor is directed to properly qualify purchasers, provide a backup buyer for the property and to present this proposed sale to the Court via a Section 363 Motion for Approval by the Court.

IT IS SO ORDERED.

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