

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:) Chapter 11 Case
) Number 97-11999
TAD'S REAL ESTATE COMPANY, INC.)
)
Debtor)
_____)
)
THE WHITFIELD COMPANY) FILED
) at 3 O'clock & 20 min. P.M.
Movant) Date: 3-23-98
)
vs.)
)
TAD'S REAL ESTATE COMPANY, INC.)
)
Respondent)

ORDER

By motion, The Whitfield Company ("Whitfield") seeks relief from the stay of 11 U.S.C. § 362(a) in Tad's Real Estate Company, Inc.'s ("Debtor") chapter 11 case in order to foreclose on 64 real estate lots previously sold and financed to Debtor by Whitfield for development as a residential subdivision. The motion for relief is granted.

On May 1, 1995 Whitfield sold and financed the sale of 65 lots to Debtor for residential development in Hephzibah, Georgia. One lot was developed, sold and released. Sixty-four lots remain and Debtor built houses on five of the lots. The five

houses are rented. Debtor failed to make tax payments and Whitfield began foreclosure. Debtor filed this Chapter 11 case on August 4, 1997, thus stopping the foreclosure sale.

Debtor did not file a plan of reorganization within 90 days of its bankruptcy filing. Monthly interest payments to Whitfield have not been made since the filing. Schedule A lists real property interest of the Debtor only in this development and the five houses built upon it, at a value of \$470,250.00. The schedules show debt totaling \$455,472.72. Monthly financial reports indicate this property is Debtor's only activity. The issues to resolve are whether the 64 lots with five rented houses constitutes "single asset real estate" under 11 U.S.C. § 101(51B) and, if so, whether relief from stay should be granted under 11 U.S.C. § 362(d)(3).

Single asset real estate is defined in 11 U.S.C. § 101(51B).¹ For Debtor's property to be single asset real estate the definition requires:

- (1) the real property to constitute a single property or project,
- (2) if residential units are involved at least four,
- (3) the property must generate substantially all of the gross income of Debtor,

¹11 U.S.C. § 101(51B)
(51B) "single asset real estate" means real 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 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 having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000.00

(4) no substantial business is being conducted by Debtor other than the business of operating the real property and activities incidental thereto, and
(5) the aggregate, noncontingent, liquidated secured debts amount to no more than \$4,000,000.00.

Single property or project has been defined in cases with similar facts as presented here. In re Pensignorkay, Inc., 204 B.R. 676 (Bankr. E.D. Pa. 1997) (undeveloped 275 acre track is single asset real estate); In re Philmont Dev. Co., 181 B.R. 220 (Bankr. E.D. Pa. 1995) (a series of semi-detached homes financed with one loan and transferred in one-third parts to three entities comprises three single projects for the three entities). Other cases found properties not to constitute single projects due to factors not reflected in Debtor's case. Centofante v. CBJ Dev., Inc. (In re CBJ Dev., Inc.), 202 B.R. 467 (9th Cir. BAP 1996) (hotel with a shop, bar and restaurant is a business because it requires substantial day to day activity to run, so the debtor is not merely "operating the property" itself to create income but a variety of activities to create income); In re The McGreals, 201 B.R. 736 (Bankr. E.D. Pa. 1996) (two tracks of partially adjoining land not linked by a common plan or scheme of use are not a single property or project); In re Kkemko, Inc., 181 B.R. 47 (Bankr. S.D. Ohio 1995) (marina with storage, repair, and winterizing abilities; a provider of showers, pool and other activities; and a seller of gas and concessions is not a single project because appurtenant docks do not suffice as "real estate" intended to produce income and the various amenities constitute a business).

Debtor's development is real property, and constitutes a single property or project. Debtor purchased the property to develop as a subdivision and intended for the property to be income producing through lot and house sales. The property is a single project with a common intended use, plan or scheme, arising from Debtor's intent to develop a residential subdivision on the property. The property does not have various amenities that require substantial daily activity to run. Rather Debtor currently merely operates the property to produce rental income.

In fulfilling the other § 101(51B) requirements, five residential units exist on the property. Debtor's schedules and monthly financial reports indicate substantially all income comes from this property. No evidence exists that Debtor conducts substantial other business than the business of operating the real property and activities incidental thereto. The schedules list Debtor's aggregate, noncontingent, liquidated secured debts as \$455,472.72, which is far less than the \$4,000,000.00 limit. Therefore, Debtor's property is a single asset real estate under § 101(51B).

The stay of § 362(a) can be terminated under 11 U.S.C. § 362(d)(3)² if no plan of reorganization is filed or the debtor

²11 U.S.C. § 362(d)(3).

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay --

has not commenced monthly payments to each secured creditor of the single asset real estate within 90 days of the case filing. Kkemko, 181 B.R. at 49. Debtor failed to file a plan of reorganization within the 90 days and failed to commence monthly payments to Whitfield. Therefore, Whitfield is entitled to relief from stay.

It is, therefore, ORDERED that The Whitfield Company's motion for relief from stay is granted.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 23rd day of March, 1998.

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period)-

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.