

Relying on Receivers Again As more properties default, court-appointed guardians take over buildings

by David Jones

As default rates surge in New York's increasingly volatile real estate market, a new generation of troubled assets is being overseen by the courts.

Since late 2008, New York area judges have placed several high-profile condo and rental complexes into receivership, appointing trustees to maintain the quality of the asset and make sure rental income, taxes and common charges are not being diverted.

Some of the most notable receivership cases in the city are at the site of last year's crane's collapse on East 51st Street in Turtle Bay, the embattled Riverton complex in Harlem and at Rector Square in Battery Park City, whose financial troubles have been chronicled on The Real Deal's Web site and elsewhere. Other, lesser-known buildings have seen receivers appointed in recent months, like 174 West 137th Street, a small rental building that defaulted on a \$2.4 million mortgage loan from JPMorgan Chase, and 215 East 3rd Street, a building that defaulted on a \$1.7 million loan from Washington Mutual.

"Our interest in receivership is mainly we think of it as a pro bono case," said Michael Green, president of Murray Hill Properties and the receiver at 174 West 137th. "We could get a call tomorrow and they say 'we've settled.'"

Attorney Chris Sullivan, whose firm represents Anglo Irish Bank, among other clients, said the situation differs today from the last recession.

"What we're seeing today that we did not see in the last economic downturn is unfinished construction projects in which there is some rental income at the property, but there remains substantial construction work to be completed," he said. "The property is facing threats to health and welfare, or just to the viability of the property itself, absent the intervention of the court."

Indeed, Anglo Irish is involved in one of the most high-profile receivership cases in New York — the foreclosure of the 304-unit Rector Square.

In February, the bank filed suit to foreclose on developer Yair Levy, who defaulted on \$165 million in loans. Levy defaulted after converting the rental building to a condominium, leaving the building with a toxic mix of condo owners, rent-stabilized tenants, affordable housing recipients and hundreds of unsold units (see Yair Levy: Condo king loses crown).

Veteran trust attorney Michael Miller was named by the court as receiver on the property, which grants him the authority not only to collect rents and common charges for the building, but to complete construction on Rector Square's common areas, which have been neglected since workers walked off the job in December.

Late last month, legal sources said Miller was about to name the Related Companies, which had originally developed the property, as the new managing agent of the building. Sources say that several investors have approached Miller about buying Rector Square's unsold inventory and reselling the units. Miller said, however, that no units would be sold until the building was more habitable.

Like most receivers, Miller was required to post a surety bond to protect the property from employee theft or fraud. Due to the complexity of the case, the bond was \$680,000, a figure considered high for such cases, and he had a difficult time finding a firm to take the risk.

Miller's compensation was set by the court, which is generally maxed out at 5 percent of the revenue the receiver generates from collected rent. He says he logged 134.5 hours through March 20, which would have generated \$75,000 in fees through his regular practice. Under the receivership payment schedule, his income is \$15,000. Still he believes the job is worthwhile.

"In terms of economics for my law practices, it's not a lot of money," said Miller. "I like doing civic work. This is not exactly that, this is sort of a meshing of the two. I have to devote enough time to the rest of my practice so it doesn't go down the drain."

New standards

Since the last downturn in the 1990s, significant changes have been made to the way guardians and receivers are selected. Scandals involving political patronage appointments and theft during the 1990s led the courts to require fiduciaries to account for their spending and decisions regularly.

It also required receivers to be listed in publicly available databases. Currently there are 349 receivers listed in Manhattan.

In one of those high-profile cases, Brooklyn attorney Helene Blank was named receiver of a condo project at 303 East 51st Street, the site of the March 2008 crane collapse, which left seven people dead and dozens injured.

The site had been the subject of numerous complaints by residents in the Turtle Bay area, alleging improper zoning. Following the crane collapse, the Department of Buildings revoked construction permits issued to the lead developer James Kennelly.

In August, senior lender Arbor Realty Funding filed suit against Kennelly Development Co., alleging that the firm had defaulted on more than \$70.3 million in loans.

Also as a result of the accident, more than \$500 million in claims were filed against the city, not to mention millions of additional claims against Kennelly's firm.

However, there was still a need to collect existing rent while resolving the outstanding claims. As part of the order naming Blank as receiver, state Supreme Court Judge Carol Edmead ordered that Parker Madison Partners be named managing agent of the receiver, with Arbor making monthly payments of \$50,000 to the receiver's account, which included payment for the receiver, legal fees, managing agent and other expenses.

Test case

Another high-profile receivership case involves developer Larry Gluck, who recently defaulted on a \$225 million mortgage loan for the 1,230-unit Riverton complex in Harlem.

Wells Fargo, the San Francisco-based lender, sued Gluck and his firm RP Stellar Riverton, who refinanced the property under a \$225 million loan in December 2006 from Deutsche Bank unit German American Capital Corp. The loan is part of a massive commercial mortgage pass-through certificate, and Wells Fargo, as trustee, alleges that Gluck defaulted on interest payments that came due in October 2008.

The deal is being closely watched by Wall Street investors because the Riverton loan is one of the city's largest and most troubled CMBS deals.

Like many who bought at the height of the market, Gluck planned to renovate a large number of apartments into market-rate units.

Documents filed with the Securities and Exchange Commission show that when Gluck acquired the building, the complex brought in an average rent of \$14.51 per square foot, with 92 percent of the building rent stabilized. Gluck told investors he could more than double the rental income to \$36.68 per square foot by converting 53 percent of the units to market rate.

"Like a lot of people, Gluck paid entirely too much for this property," said state Assemblyman Keith Wright, a resident of Riverton and former head of the building's tenant association. "He offered people \$10,000 to move out of their apartments and move into other units. As a tenants association, we said, 'Don't take a sucker's deal.'"

Not only did Gluck fail to dislodge most of the Riverton's rent-stabilized tenants, he burned through the complex's \$19 million reserve fund.

In February, the court named Seymour Boyers, an attorney and former associate justice in the state's Appellate Division, as the receiver. Boyers, who did not return calls for comment, is a former city councilman from Queens and was on the state's fiduciary appointments commission.

The court order gave Boyers the power to collect rents from tenants and to lease new apartments for up to two years. Meanwhile, a February auction of a \$25 million mezzanine loan by Hartford, Conn.-based Realty Finance Corp. was canceled.

Gluck attorney Stephen Meister said the developer was in "good faith settlement negotiations" with the Riverton's lenders, and felt "positive" about reaching an agreement.

Meanwhile, Jamie Heiberger-Jacobsen, a New York real estate lawyer, said she has recently applied to become a receiver in a growing number of buildings will need them. "I personally haven't been involved in anything yet, but we're slowly starting to hear this," Heiberger-Jacobsen said. "Over the course of the next few months, you're really going to see it."

Ron Glass, founder of Atlanta-based GlassRatner Advisory & Capital Group, said his firm has just opened its first New York office at 424 Madison Avenue, because he also expects to see increased demand in qualified receivers.

"There's a lot of competition in all markets and more competition is coming," said Glass. "Today a lot of people that are underemployed or out of work are looking at some way to generate revenue."

However, Percy Pyne, chairman of the Pyne Cos., warns that lenders will do almost anything to prevent a property from going into receivership, because once that happens the ability to manage the asset is diminished.

"I would think the worst thing for the lender and the property is [to hand it over to a] receiver, unless there are two or three people fighting over who owns it," said Pyne. "Really, a receiver is a last resort."