

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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FILED
JUL 7 2010
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 09-17038-PB11
12 WESTERN SUNSET, LLC,) RS No. GCL-1
13 Debtor.) ORDER ON MOTION FOR RELIEF
14) FROM STAY
15)

16 Western Sunset, LLC (debtor) filed its Chapter 11 petition
17 on November 4, 2009. On December 3, debtor filed a Status
18 Conference Report, reflecting that the debtor is "a real
19 estate acquisition and development company owned by" the
20 Gabriel P. Castano Trust and the Linda S. Castano Trust.
21 Gabriel Castano is the managing member. According to the Report,
22 debtor owns a number of pieces of property, some as sole owner,
23 and some as a tenant in common with the Beryl Tilton Trust, the
24 RST Trust, and the Dean and Dina Tilton Family Trust.

25 The debtor stated that in addition to certain residential
26 and commercial properties, the debtor owns the land on which
Discovery Valley Equestrian LLC facility (Equestrian Center) was

1 and is being built. The debtor stated it was 95% complete, and
2 would stable and care for horses. It is this facility which is
3 at issue in this motion.

4 The Court has subject matter jurisdiction over this
5 proceeding pursuant to 28 U.S.C. § 1334 and General Order
6 No. 312-D of the United States District Court for the Southern
7 District of California. This is a core proceeding under
8 28 U.S.C. § 157(b)(2)(G).

9 Temecula Valley Bank made two loans to debtor to develop
10 the Equestrian Center. The senior loan was a long term loan in
11 the principal amount of \$2,490,000. On the same date in December
12 2007 debtor executed a promissory note on the junior loan in the
13 principal amount of \$1,494,000. It was to be a short-term loan
14 and would be paid off by the Small Business Administration upon
15 the happening of certain events. Those events did not occur and
16 Temecula Valley Bank still held both notes when the bank was
17 taken over by the regulators. FDIC subsequently sold most of
18 the bank's assets to First-Citizens Bank & Trust in or around
19 July 2009.

20 According to the debtor in its Report, the bankruptcy
21 petition was precipitated by an impending foreclosure sale by
22 Zions First National Bank, which holds the senior lien on
23 433-443 E. Mission Road in San Marcos, CA. First-Citizens has a
24 junior lien on the same property as additional collateral on its
25 loan.

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1 First-Citizens states by declaration that at the time of
2 filing the petition, the senior lien was current, and the balance
3 owing was \$2,424,430.35, plus \$9,433.15 in interest. The junior
4 lien had matured and was all due and payable in the amount of
5 \$1,499,916.15. The last payment was made July 10, 2009. Since
6 the filing of the petition debtor has continued to make the
7 payments on the senior debt, which remains current, but no
8 payments have been made on the junior lien.

9 First-Citizens and debtor disagree on the value of
10 First-Citizens' collateral, but both agree there is no equity in
11 the collateral properties for the debtor. Mr. Castano stated in
12 his declaration in opposition that it would take an additional
13 \$175,000 - \$200,000 to complete construction of the Equestrian
14 Center, and that work stopped on the facility in July, 2009, when
15 the last disbursement from the junior loan was made to
16 subcontractors on the project. Mr. Castano's declaration also
17 states that in late August 2009 he "was told that the Junior Loan
18 was due and payable upon maturity and [he] was further told by
19 Mrs. Loiacono of First-Citizens, that [he] would need to obtain
20 financing from another lender."

21 On February 8, 2010 debtor filed another Status Conference
22 Report. Debtor reiterated its stated intention to employ insider
23 Tilton Realty "as its listing agent for the sale and lease of the
24 properties." Although debtor stated in the December report that
25 it was "actively marketing the properties for lease or sale", and
26 that it expected to have leases in place by January 1, 2010,

1 there has been no application to employ Tilton or any other
2 broker in this case. Debtor concluded its February report by
3 stating:

4 10. Debtor and its counsel are continuing
5 efforts to modify the current loans with
6 First Citizens Bank and Zions Bank. Debtor
7 is also looking into retaining, with court
8 approval, a company specializing in
9 commercial loan modifications.

10 11. Debtor [sic] intends to continue the
11 marketing of the properties for sale or lease
12 and anticipates filing its plan of
13 reorganization by mid-March.

14 Debtor's next Status Conference Report was filed April 4,
15 2010. In it, debtor discussed the status of each of its
16 properties. Regarding those that make up the Equestrian Center,
17 debtor reported that the senior lien of First-Citizens remained
18 current, while the junior was in arrears. The properties were
19 all rented, yielding \$16,332 total per month. Debtor stated:
20 "Debtor would like to complete the Equestrian Center to maximize
21 the income from a sale of this property. Debtor will have to
22 borrow money to do so and is hoping to work with First Citizens
23 to accomplish this." Debtor then stated: "Debtor is preparing
24 applications for employment of Tilton Realty as its listing agent
25 for the sale and lease of the properties." Debtor advised that
26 it had received undistributed loan funds of approximately
\$70,000, which it used to cure arrears on one property "and is
still seeking to come to an agreement with secured creditors

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1 Zions (443 E. Mission) and First Citizens (Discovery Equestrian
2 Center) as to payments from the balance of the Vibra Bank funds."

3 Finally, debtor stated:

4 5. Debtor [sic] intends to continue
5 marketing of the properties for sale or lease
6 and anticipates filing its plan of
7 reorganization following determination of the
8 motion for relief from stay filed by Zions
9 Bank and the opening of escrow on the 1440
10 Descanso property later this month.

11 Zions had filed their motion for relief on March 5, alleging
12 debtor had made no payments since filing the petition in
13 November. Zions and debtor entered into an interim adequate
14 protection order for four months effective April 26, 2010.

15 Since debtor has acknowledged there is no equity in the
16 collateral pledged to First-Citizens, the remaining issue is
17 whether the property is necessary to the debtor's reorganization.

18 As the Supreme Court stated in United Savings Ass'n of Texas v.
19 Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-76
20 (1988):

21 Once the movant under § 362(d)(2) establishes
22 that he is an undersecured creditor, it is
23 the burden of the debtor to establish that
24 the collateral at issue is "necessary to an
25 effective reorganization." See § 362(g).
26 What this requires is not merely a showing
that if there is conceivably to be an
effective reorganization, this property will
be needed for it; but that the property is
essential for an effective reorganization
that is in prospect. This means, as many
lower courts, including the en banc court
in this case, have properly said, that
there must be "a reasonable possibility
of a successful reorganization within a
reasonable time." [Citation omitted.]
The cases are numerous in which § 362(d)(2)

1 relief has been provided within less than a
2 year from the filing of the bankruptcy
3 petition. And while the bankruptcy courts
4 demand less detailed showings during the
5 four months in which the debtor is given the
6 exclusive right to put together a plan, see
7 11 U.S.C. §§ 1121(b), (c) (2), even within
8 that period lack of any realistic prospect
9 of effective reorganization will require
10 § 362(d) (2) relief. (Emphasis in original.)

11 With the foregoing burden in mind, the Court finds and
12 concludes that the debtor has made no showing of how the property
13 is necessary for an effective reorganization. As noted, the case
14 was filed November 4. No broker has been employed to lease or
15 sell any property in which the estate has an interest, despite
16 multiple representations of intentions to do so. Instead,
17 certain of the properties continue without tenants and others
18 have tenants in default for nonpayment of rent for months.

19 The debtor's operating reports show a negative balance, even
20 after infusion of roughly \$70,000 in funds released by Vibra
21 Bank. Zions Bank sought relief from stay for nonpayment on the
22 debt to it post-petition. While that has been addressed by an
23 adequate protection order on an interim basis, it supports the
24 argument that debtor cannot meet its current debt load, much less
25 cure or pay prepetition debt from operating revenue. That is
26 exacerbated by the continuing default on the junior lien owed
27 First-Citizens.

28 The Court is mindful that debtor has kept the first position
29 loan of First-Citizens current, apparently through the use of
30 cash collateral, although debtor has never sought authority to

1 use cash collateral. As noted, debtor owns the land under the
2 Equestrian Center and receives rent from the entity operating it.
3 Debtor has not provided any information on the amount of the
4 revenue the Center generates for its operator, or other terms of
5 the lease aside from the monthly rent the debtor receives.
6 Whether the lease is a current market lease is unknown.

7 As noted, work ceased on the Equestrian Center in July,
8 2009. More funding is necessary to complete the facility, but
9 the debtor has not indicated any has been found. Debtor was told
10 in August, 2009 it would have to find another lender, yet
11 throughout the life of this case the debtor has stated it
12 continues to try to work with First-Citizens to arrange the
13 financing. So far as the Court is aware, nothing has come of
14 whatever efforts debtor has made along those lines in the many
15 months that have elapsed since the need was recognized in July or
16 August, 2009.

17 Conclusion

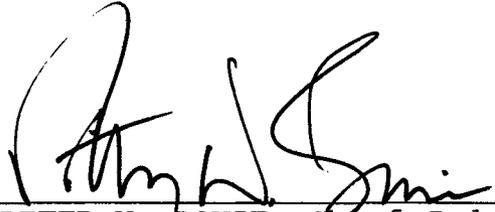
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19 First-Citizens has established there is no equity for
20 debtor in the collateral pledged to secure the debts owed to
21 First-Citizens. Debtor has acknowledged there is no equity.
22 Many months have gone by without any observable progress toward
23 an effective reorganization in this case. To the contrary, it
24 appears the debtor's financial hole has gotten deeper. No
25 proposed plan of reorganization has been filed. While debtor
26 has made noises about employing a broker to lease and/or sell

1 properties, no application has been submitted to the Court. The
2 Court recognizes that the City of San Marcos, as a junior lien
3 creditor opposes relief, in part because it may jeopardize the
4 Conditional Use Permit that allows the Equestrian Center to
5 operate. Neither the debtor nor the city have proposed any
6 alternative, much less a viable one. Accordingly, for the
7 reasons set out above, the Court finds that debtor has failed to
8 meet its burden of showing that debtor has a reasonable prospect
9 of an effective reorganization within a reasonable period of time
10 as to which the subject properties are necessary.

11 THEREFORE, First-Citizens is granted relief from the
12 automatic stay of 11 U.S.C. § 362(a) to pursue enforcement of
13 its rights against the collateral pledged to it on its junior
14 lien, only. The senior lien is current, and while there may be
15 a technical breach because of the breach on the junior lien, that
16 is not sufficient to warrant relief on the senior lien.

17 IT IS SO ORDERED.

18 Dated: JUL -7 2010

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PETER W. BOWIE, Chief Judge
United States Bankruptcy Court

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