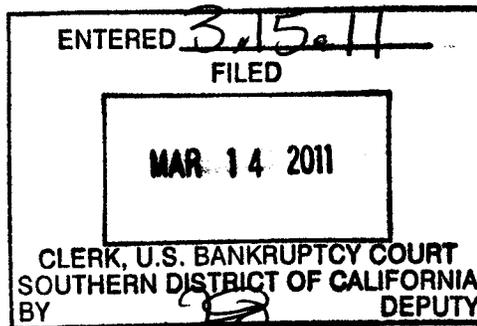


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) BANKRUPTCY NO: 10-15177-MM11  
)  
LAGOON BREEZE DEVELOPMENT )  
CORPORATION, ) CHAPTER: 11  
)  
) MEMORANDUM DECISION  
)  
Debtor, ) DATE: February 28, 2011  
) TIME: 9:30 a.m.  
) CRTRM: 1  
)  
) JUDGE: Margaret M. Mann  
)

---

1 This final ruling supplements the Court's tentative ruling, issued on March 8, 2011, and the  
2 Court's oral ruling made on the record on March 4, 2011, following the evidentiary hearing held on  
3 February 28, 2011 on the MOTION FOR RELIEF FROM STAY, RS #DKE-1 FILED BY PACIFIC  
4 WESTERN BANK ("Bank"), and the Debtor's MOTION FOR AUTHORITY TO BORROW, POST-  
5 PETITION, FROM SEATTLE FUNDING GROUP OF CALIFORNIA, LLC ON A SECURED  
6 BASIS SENIOR TO THAT OF PACIFIC WESTERN BANK ("Motions") in this case. The Court  
7 makes these final findings of fact and conclusions of law to address the responses of Lagoon Breeze  
8 Development Corporation, and Pacific Western Bank, to its tentative ruling.

9 While the record of those previous rulings is incorporated by reference here, this Memorandum  
10 Decision controls in the event of a conflict with the earlier record.

#### 11 ASSESSMENT OF BANK'S SECURED CLAIM

12 The Bank asserted that the Court should not have sua sponte limited the Bank's entitlement to  
13 adequate protection to safeguarding only the value of its collateral on the petition date. The Bank  
14 would have preferred that both its secured and unsecured claims received adequate protection. Even  
15 though the Debtor did not raise this issue, the Court's analysis is bound by 11 U.S.C. §506(a) to protect  
16 only the Bank's secured claim. The Bank's unsecured claim is entitled to neither interest, attorney's  
17 fees, nor adequate protection. The concept of adequate protection is limited to only the secured claim  
18 as was explained in *In re WRB West Associates Joint Venture*, 106 B.R. 215, 219-20 (Bankr. D. Mont.  
19 1989):

20  
21 In a classic sense, adequate protection payments should be applied to  
22 compensate a secured creditor for any diminution in the value of  
23 collateral as a result of use, depreciation, destruction or other caused  
24 reduction in value. 11 U.S.C. § 361; 11 U.S.C. § 363(e); *United Sav.*  
25 *Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, (*In re*  
26 *Timbers of Inwood Forest Assocs., Ltd.*), 793 F.2d 1380, 1412 n. 57  
27 (5th Cir.1986) (collecting supporting cases), *aff'd*, *United Sav. Ass'n of*  
28 *Texas v. Timbers of Inwood Forest Assocs., Ltd.*, [484] U.S. [365], 108  
S.Ct. 626, 98 L.Ed.2d 740 (1988); *General Elec. Mortgage Corp. v.*  
*South Village, Inc. (In re South Village, Inc.)*, 25 B.R. 987, 994  
(Bkrty.D.Utah 1982) ('adequate protection was protection ... against  
depreciation of the collateral when it erodes the allowed secured  
claim.').

1 The Court's adequate protection analysis thus requires it determine the amount of the secured  
2 claim that is entitled to adequate protection. To do otherwise would be error.

### 3 ADEQUATE PROTECTION

4 In determining whether the Bank's secured claim is adequately protected pursuant to 11 U.S.C.  
5 §361 if the Debtor were to complete construction and sell at retail value the seven condominiums  
6 located at 234 to 258 Date Avenue, Carlsbad, California ("Property"), the Court has previously  
7 concluded that under any conceivable scenario supported by the evidence, the value of the Bank's  
8 collateral will increase by approximately \$4 million by the effort; double the amount of the  
9 approximately \$2 million priming loan.

10 The Bank suggests that the condominiums must sell for between 91% and 93.24% of their  
11 Court-projected values or the Bank's secured claim of \$9.59 million will not be protected. The Court  
12 rejects this reasoning because the evidence before the Court shows that the determination of current  
13 value of the Property (*i.e.* the amount of the Bank's secured claim) is derived from the ultimate value  
14 of the completed condominiums. See "Declaration of Andrew D. Jones in Support Motion For Relief  
15 From The Automatic Stay", Exhibit 16 at 88. [Docket item 14, filed Nov. 22, 2010]. Following this  
16 methodology, if the expected retail values of the condominiums are reduced by to 91% to 93.24% of  
17 the Court's findings in this case, then the evidence would mandate that the Bank's secured claim would  
18 be adjusted downward in a respective amount. In this hypothetical analysis, the value of the Property  
19 as of petition date would be calculated starting with projected retail sales values 91% to 93.24%, and  
20 this reduction would play through the process that results in a lower secured claim of the Bank. In  
21 other words, whether the retail sales values are high (as with the Debtor's numbers), or low (as with the  
22 Bank's numbers), the Bank's secured claim is about \$4 million less than the total of those retail sales  
23 values. Because the secured claim is derivative of the ultimate completed value, the respective  
24 numbers in the financial scenarios will remain proportionate to each other, and consistently align with  
25 the Court's prior analyses. *See also In re Yellowstone Mt. Club, LLC*, 2008 Bankr. LEXIS 4062  
26 (Bankr. D. Mont. Dec. 17, 2008) (approving priming loan that would maximize the going concern  
27 value of the Debtor to the benefit of the creditor and maximize the overall return to the lender).



- 1 (6) The Debtor is required to provide proof of insurance to the Bank for the entire term of  
2 the priming loan, subject to restriction on the insurer's ability to cancel if the Debtor  
3 defaults without notice to the Bank and order of the Court.  
4 (7) There will be no change in the "sales and marketing" budget without further order of  
5 the Court.  
6 (8) No transfer of funds will be allowed among the various budgeted line items shown on  
7 the Debtors' detailed construction budget unless the Debtor can demonstrate to the  
8 priming lender and the Bank or, alternatively, through an Order of the Court, that any  
9 shift among such line items is reasonable and necessary.  
10 (9) The Debtor will make no changes to the existing "spec" level of the remaining seven  
11 units – i.e., all to be built to a similar level quality to 262 Date;  
12 (10) The Motion for Relief From Stay and the Chapter 11 Status Conference are continued,  
13 such that the Debtor can periodically report to the Court and the Bank on the status of  
14 the case, and the construction and sale of the units. The date of the next continued  
15 hearing will be March 28, 2011 at 3:00 p.m., rather than the March 25, 2011 date  
16 reflected in the March 4, 2011 minute order.

17 The Debtor is to submit an order granting the Motions consistent with relief granted, and the  
18 findings of facts and conclusions of law made, in this Memorandum Decision.

19 IT IS SO ORDERED.

20 Dated: March 14, 2011

21   
22 MARGARET M. MANN, JUDGE  
23 United States Bankruptcy Court  
24  
25  
26  
27  
28