12-1505

11-13-12

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

KEYSER HOUSE BONDS, L.L.C.,

Plaintiff,

vs.

Civil Action No. 12-C-62
Judge Jordan

KEYSERHOUSE ASSOCIATES LTD PARTNERSHIP,
HUNTINGTON NATIONAL BANK, and
CITY OF KEYSER,

Defendants.

ORDER

This matter came on for further consideration on this 29th day of October, 2012, upon the appearance of the plaintiff, Keyser House Bonds, L.L.C. ("Plaintiff"), by Jason R. Sites, its counsel; the defendant, Keyserhouse Associates LTD Partnership ("Keyserhouse Associates"), by Nelson M. Michael, David Collins, and Nelson M. Michael, L.C., its counsel; the defendant, Huntington National Bank ("Huntington"), by Michael Llewellyn, its counsel; and the defendant, the City of Keyser ("City"), by Arnold J. Janicker, and Jenkins Fenstermaker PLLC, its counsel, pursuant to the City's request for a status hearing on this date and time.

Thereupon, the Court inquired as to the status of this matter, requesting first to hear from Mr. Michael regarding the progress made toward the execution of a management agreement for the Keyserhouse with RLJ Management ("RLJ") and a purchase agreement for the sale of the Keyserhouse to Buckeye Community Hope Foundation ("Buckeye"), as was contemplated at the September 19, 2012 hearing in this matter (and subsequent Order entered October 11, 2012). Mr. Michael advised the Court that: (1) a management contract for the Keyserhouse with RLJ had been executed by Keyserhouse Associates and the City; (2) a purchase agreement for the Keyserhouse had been executed between Buckeye and Keyserhouse Associates and the City; (3)

J. Sites
N. Michael
D. Collins
M. Llewellyn
A. Janicker

RLJ was in the process of reviewing Keyserhouse's records and making improvements to the Keyserhouse that were designed to secure Section 8 HUD funding, which included, among other things, performing maintenance and renovating common areas and vacant apartments in the Keyserhouse; (4) RLJ had appointed an on-site manager at the Keyserhouse, and was taking control of all management functions for the Keyserhouse, including, but not limited to paying on behalf of Keyserhouse Associates the court-ordered $5,000/month payment to the bondholders; and (5) RLJ, with the cooperation of Keyserhouse Associates and the City, was taking all necessary action to ensure that Keyser House continued to maintain Section 8 status for HUD funding. Mr. Collins advised the Court that upon information and belief, the above-stated Court ordered payment to the bondholders had been made by Keyserhouse Associates for the month of October.

The Court then inquired of counsel as to when Keyserhouse Associates and the City anticipated closing the sale of the Keyserhouse to Buckeye and would be able to satisfy the indebtedness on the bonds. Mr. Janicker advised that the closing was contingent upon Buckeye obtaining an appraisal of the Keyserhouse and obtaining the necessary funding, which would determine the closing date. Mr. Janicker further advised the Court that: (1) the City remained concerned with, and was acting to address the well being of the residents of the Keyserhouse, the maintenance of the Section 8 funding, and prompt payment of the bondholders, and that the City and Keyserhouse Associates had been working very diligently to prepare and implement a settlement agreement between them, as well as the management contract and purchase Agreement for the Keyserhouse as contemplated by the Court's October 11, 2012 Order; (2) the City believed that the result of this work would ultimately satisfy the obligations owed to the bondholders, as well protect the residents of Keyserhouse and help to maintain Section 8 HUD

funding; (3) Huntington Bank, the trustee, had resigned effective October 30, 2012, but then had attempted to withdraw its resignation, despite the fact that there was no procedure in the Indenture for a trustee to withdraw its resignation; that Plaintiff's counsel, acting together with the Trustee, had in violation of this Court's October 11, 2012 Order, published a notice of foreclosure sale for the Keyserhouse in the local paper; and the Plaintiff's attempt to proceed with foreclosure violated the letter, tenor and tone of the said Order in this matter.

The Court then inquired of counsel for Huntington as to why the Trustee, after previously taking no action to address Plaintiff's allegations of default and resigning, had agreed to allow Plaintiff's counsel to attempt to proceed with a foreclosure sale for the Keyserhouse despite the Court's October 11, 2012 Order directing that no foreclosure sale take place—while the City and Keyserhouse Associates moved, as directed by said Order, to secure a buyer for the Keyserhouse. Mr. Llewellyn advised the Court that Huntington had been of the opinion that the injunctive relief sought by the Plaintiff in this action was not within the purview of the Indenture; however, since the last hearing, where the Court ruled that it would not currently consider the Plaintiff's application for injunction, Huntington had been working with the Plaintiff to follow the Indenture and was now comfortable going forward, since it is of the opinion that Plaintiff had complied with the terms of Indenture that permitted Plaintiff to foreclose on the Keyserhouse. Mr. Llewellyn, after acknowledging that the Indenture provided no process for the Trustee's withdrawal of its resignation, next advised the Court that Huntington was in receipt of notice of the trustee's removal signed by the City and Keyserhouse Associates and presented said notice to the Court for review. Mr. Llewellyn then requested an opinion from the Court as to whether Huntington was still the trustee, and further argued that: (1) the trustee gave notice of the foreclosure because it believed that the Plaintiff had complied with those actions that were

required by the Indenture and it had been indemnified by Plaintiff; (2) removal of the trustee was permitted under the Indenture and the Indenture provided for a sixty day period for the City and Keyserhouse Associates to appoint a new trustee; and (3) that this matter was now moot as to Huntington, due to its removal as trustee, thereby justifying its dismissal from this action.

The Court then heard from Mr. Sites, who advised the Court that he was not aware of the removal of the trustee and asked for a reason for the trustee's removal. Whereupon, the Court advised Mr. Sites of the removal provision in the Indenture and that it did not require the removing parties to provide a reason. The Court then asked Mr. Sites if there was anything else that he wanted to add. Mr. Sites informed the Court that the Plaintiff would be re-appointing Huntington as trustee today, to which Mr. Collins argued that it was the City, as issuer, and Keyserhouse Associates, as lessee, who removed the trustee, therefore, they had the right to appoint a substitute trustee for a period of up to sixty days from the notice of removal. Mr. Sites then argued that the Plaintiff could appoint a trustee at will and objected to the Court's interference with the pending foreclosure, arguing that the Indenture controlled the procedure for foreclosure, to which Mr. Collins replied that Mr. Sites waived that argument when he chose to seek a declaratory judgment from this Court, and further that there was no evidence in the record to support Plaintiff's assertion that the pre-foreclosure procedure—including notice and right to cure provisions in the Indenture—had been followed, as discussed at previous hearings. Mr. Sites further objected to the nature of the proceedings, as the matter was set for a status conference. The Court then stated that it was the Plaintiff who brought this declaratory action, and it appeared to the Court that the Plaintiff was now attempting to impermissibly use the foreclosure sale to circumvent the Court's October 11, 2012 Order denying Plaintiffs request to foreclose on the Keyserhouse. Mr. Michael added that the Plaintiff's failure to comply with the

notice and right to cure provisions may result in clouded title, were the Plaintiff to proceed with the foreclosure, and that there was a possibility that a foreclosure sale could endanger the residents of the Keyserhouse by jeopardizing HUD Section 8 funding. The Court then cited the language in Mr. Sites' Complaint for Declaratory Judgment, wherein the Plaintiff requested that the Court "award any such other relief that it deems is equitable, proper and in the pursuit of justice."

Mr. Janicker then stated his opposition to Huntington being released as a party to the litigation, in the event that the matter moved forward, as Huntington had yet to file an answer in the matter, and that the City may have cross-claims against Huntington, which were not yet ripe for filing.

Upon due consideration of the matters presented on this date and at previous hearings in this matter, as well as the pleadings and exhibits filed to date, the Court does now make the following findings of fact and conclusions of law:

1. By proceeding with a foreclosure sale whereby the Plaintiff's counsel is advertised as agent, Plaintiff, Plaintiff's counsel, and Huntington are clearly in violation of, as well as the purpose and intent of, the Court's October 11, 2012 Order.

2. Huntington is removed as trustee per the October 26, 2012 notice of removal, and therefore is no longer the trustee for the Keyserhouse and the City and Keyserhouse Associates have pursuant to the Indenture sixty (60) days to appoint a successor Trustee.

3. The public interest, as well as the interest of the citizens of Keyser living in the Keyserhouse, will be promoted by proceeding by the sale of the Keyserhouse to Buckeye as anticipated and described by Mr. Michael. The Court also notes that the interests of the parties and the interest of justice will be served by said sale and payment of the bonds with sale

proceeds.

4. Plaintiff has failed to offer any evidence or proof that it complied with the pre-foreclosure notice and right to cure procedures contained in the Indenture.

5. Plaintiffs opted to pursue this matter through a declaratory judgment action, rather than through the procedures set forth in the Indenture, and requested that this Court "award any such other relief that it deems is equitable, proper and in the pursuit of justice."

6. The Court deems it equitable, proper, and in the interest of justice to enjoin and prohibit any foreclosure efforts by Plaintiff, particularly in light of the Court's October 11, 2012 Order.

Based upon the foregoing, it is now duly ADJUDGED and ORDERED as follows:

1. The Plaintiff is hereby enjoined from foreclosing on the Keyser House, and accordingly, neither the Plaintiff nor anyone acting on the Plaintiff's behalf may proceed with a foreclosure against the Keyserhouse without further order of this Court.

2. The Plaintiff shall not seek to hinder or otherwise interfere with any purchase agreement among the sellers, the City and Keyserhouse Associates, and their respective purchaser(s).

3. Huntington bank is removed as trustee herein on October 26, 2012, and was relieved of any further obligations to the parties incurred subsequent to such date, and also is dismissed without prejudice as a defendant in this matter.

4. The objections of the parties to the rulings of the Court are noted and saved.

The Clerk is hereby DIRECTED to forward certified copies of this Order to counsel of record upon its entry. Further, the Clerk is hereby DIRECTED upon the entry of this Order to remove this action from the docket of this Court and place it among civil actions ended, as provided by law.

All of the proceedings had this day were taken by the court reporter and are a part of this

order as though the same were textually incorporated verbatim herein, but are not to be transcribed unless so ordered by the Court.

DONE and ENTERED this 13th day of November, 2012.

HONORABLE PHIL JORDAN,
CIRCUIT JUDGE

TESTE COPY

Clerk Circuit Court of Mineral County, W. Va.

10-11-12

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

KEYSER HOUSE BONDS, L.L.C.,

Plaintiff,

vs.

Civil Action No. 12-C-62
Judge Jordan

KEYSERHOUSE ASSOCIATES LTD PARTNERSHIP,
HUNTINGTON NATIONAL BANK, and
CITY OF KEYSER,

Defendants.

ORDER

This matter came on for further consideration on this 19th day September, 2012, upon the appearance of the Plaintiff, Keyser House Bonds, L.L.C., by Jason R. Sites, its counsel, the Defendant Keyserhouse Associates LTD Partnership, by Nelson M. Michael, and David R. Collins, and Nelson M. Michael, L.C., its counsel, the Defendant Huntington National Bank by Michael Llewellyn, its counsel, and the Defendant, City of Keyser, by Arnold J. Janicker, and Jenkins Fenistermaker PLLC, its counsel, pursuant to the Plaintiff's motion to re-open this cause and to grant it an injunction for the purpose of taking immediate control and management of the housing project of the Defendant Keyserhouse Associates LTD partnership.

Thereupon the Court, after reviewing the procedural history of this matter, advised counsel that it was aware of several procedural issues remaining to be addressed before considering the Plaintiff's motion for injunctive relief and thereupon proceeded to hear the argument of counsel with regard to such procedural issues. Thereafter, the Court then heard the argument of counsel for the Plaintiff and counsel for the Defendant, Keyserhouse Associates LTD with regard to the Plaintiff's request for injunctive relief.

J. Sites
N. Michael
D. Collins
M. Llewellyn
A. Janicker

Upon due consideration of all of the matters presented, the Court does now make the following findings of fact:

1. That the Plaintiff previously executed a conditional assignment of the bonds in question in this proceeding to BB&T Bank, and as a result the Court finds BB&T Bank to be a necessary party that should be joined and brought into this action.

2. That the Court has a serious concern regarding whether the Plaintiff properly complied with all of the requirements set forth in the Indenture of Trust regarding the Defendant, Keyserhouse Associates' right to cure default and notice with regard thereto.

3. That the Court further has a serious concern as to whether any foreclosure sale as proposed by the Plaintiff under the subject Indenture of Trust would be found to be valid by the appellate court.

Based upon all of the foregoing, it is now duly ADJUDGED and ORDERED as follows:

1. That the Court is not going to consider the Plaintiff's application for an injunction at this time.

2. That the Defendant, Keyserhouse Associates, LTD is free to immediately proceed to enter into a property management agreement with RLJ Management, Inc. for the operation of the Keyserhouse property commencing on Monday, September 24, 2012.

3. That the Defendant, Keyserhouse Associates, LTD and the City of Keyser are free to immediately proceed to negotiate and enter into a purchase agreement with RLJ Management, Inc. or its parent company, Buckeye Community Hope Foundation, for the purchase and sale of the property of Keyserhouse Associates, LTD.

4. That beginning October 1, 2012, and continuing on the first day of each successive month thereafter, and until the further order of this Court, RLJ Management, Inc. and/or

Keyserhouse Associates, LTD shall pay the sum of $5,000.00 per month to be applied to the payment of the bond indebtedness.

5. That the Defendant Keyserhouse Associates, LTD, or RLJ Management, Inc. on behalf of said Defendant shall provide periodic updates to the Court concerning RLJ Management, Inc's management and operation of the subject housing project as well as the proposed purchase thereof by Buckeye Community Hope Foundation.

That the objections of the parties to the rulings of the Court are noted and saved.

This matter now stands continued.

Entered this 11th day of Oct., 2012.

Phil Jordan

PHIL JORDAN
CIRCUIT JUDGE

TESTE COPY

Clerk Circuit Court of Mineral County, W. Va.

CERTIFICATE OF SERVICE

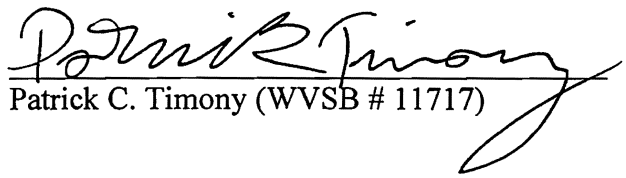
I, Patrick C. Timony, do hereby certify that I have caused copies of the hereto attached ***Notice of Appeal*** to be served upon the following:

Nelson M. Michael, Esq.
126 East Street
Post Office Box 59
Keyser, West Virginia 26726
Counsel for Keyserhouse Associates, Ltd

Lee Murray Hall, Esq.
Arnold J. Janicker, Esq.
JENKINS FENSTERMAKER, PLLC
Post Office Box 2688
Huntington, West Virginia 25726

Michael A. Llewellyn, Esquire
Geppert McMullen Payne & Getty
21 Prospect Square
Cumberland, MD 21502
Counsel for Huntington National Bank

by first class mail, postage pre-paid on this **12th day of December, 2012.**



Patrick C. Timony (WVSB # 11717)