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Feb. 22, 2007

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Motion made to freeze assets

Investors seeking to delay hearing on USA Capital

By JOHN G. EDWARDS
 REVIEW-JOURNAL

Three hundred dissident investors again are asking for a court order to delay or stop part of the USA Capital bankruptcy case, which involves 6,000 investors around the country and \$962 million in assets.

The Lenders Protection Group late Tuesday filed a motion with bankruptcy Judge Linda Riegle to freeze some of the mortgage lender's assets pending an appeal of the bankruptcy case, which was filed last April.

The debtor company solicited money from individual investors to make short-term loans secured by real estate, often to developers.

Before filing for bankruptcy, USA Capital sometimes diverted or stole principal when borrowers paid off loans, according to the motion. Rather than returning the repaid principal to investors, USA Capital used the money for other purposes, the motion said.

USA Capital also continued to pay money to investors who held stakes in loans that borrowers had stopped paying.

The judge required the interim managers at USA

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Capital to hold back payments to investors who received payments on nonperforming loans before the bankruptcy. The appeal and requested stay focus on that money.

"The Lenders Protection Group again is attempting to undo the plan the overwhelming majority of direct lenders and investors supported," said Greg Garman, an attorney with Gordon Silver, which represents an investor committee.

Reno attorney Alan Smith, who represents the lenders group, and Janet Chubb of Jones Vargas, who represents other investors, filed the motion for a stay.

The motion cited an example explaining how the bankruptcy rulings in the USA Capital case could reduce an investor's recovery payments.

The example cites an investor who had received \$100,000 in payments in interest on loans that were no longer being paid off but also has a claim against USA Capital for \$200,000 in principal payments that were diverted from another loan.

Based on analyst expectations, the borrower would recover between 8 percent and 35 percent of his \$200,000 unsecured claim, according to the motion. In the case cited, the investor would receive only \$16,000, not the full \$108,000 he would otherwise get, because the bankruptcy court withheld \$100,000 to offset the payments he had already received on nonperforming loans.

The motion contends this is "inequitable treatment" based on earlier court cases. The motion alleges that the bankruptcy judge violated federal bankruptcy procedural rules that would end up denying his clients protection under the "due process" provision of the Constitution.

Although the dissidents appeal this issue, they want the bankruptcy court to freeze money that was used to offset payments on nonperforming loans.

Smith argued that the bankruptcy judge no longer need fear the appeal will interfere with the sale of USA Capital loan servicing and assets of a mortgage loan fund to Compass Partners of New York, because the New York firm closed on the \$67 million transaction Friday.

The Lenders Protection Group previously obtained a stay from a bankruptcy appeals panel before the closing of the Compass Partners deal, but U.S. District Judge Robert Jones overturned the stay and returned the matter to Riegler. The dissident group dropped the matter and did not ask Riegler for a stay at that time.

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Attorneys for the USA Capital estate and investor committees are expected to oppose the dissidents' request for a stay. The judge has not scheduled a hearing date.

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