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12 **Compass USA SPE LLC**

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

<p>15 3685 SAN FERNANDO LENDERS, LLC, et 16 al.,</p> <p>17 Plaintiffs,</p> <p>18 v.</p> <p>19 COMPASS USA SPE LLC, et al.,</p> <p>20 Defendants</p>	<p>Case No. 2:07-CV-892-RCJ-GWF-BASE Case No. 3:07-CV-241-RCJ-GWF</p> <p>Bankruptcy Case No. BK-S-06-10725 LBR [Chapter 11]</p> <p>DECLARATION OF PAUL TORRES IN SUPPORT OF MOTION FOR APPOINTMENT OF RECEIVER</p>
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23 I, Paul Torres, declare as follows:

24 1. I am duly licensed to practice law in the States of California, and admitted *pro hac*
25 *vice* to practice in the United States District Court for the District of Nevada in the above-
26 referenced matter. I am an associate with the law firm of Milbank, Tweed, Hadley & McCloy
27 LLP, ("Milbank"), counsel for Compass USA SPE LLC, and its servicer, Compass Financial
28

1 Partners LLC (together, "Compass"). I submit this declaration in support of the Motion for
2 Appointment of Receiver. I have personal knowledge of the facts stated in this declaration and, if
3 called upon to do so, would testify competently thereto at trial.

4 2. Attached hereto as Exhibit A are true and correct excerpts of the Transcript of
5 Proceedings before this Court on October 2, 2007, Volume II.

6 3. Attached hereto as Exhibit B are true and correct excerpts of the Transcript of
7 Proceedings before this Court on April 28, 2008.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed this 19th day of May, 2008 in Los Angeles, California.

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13 Paul Torres
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Exhibit A

Exhibit A

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

3685 SAN FERNANDO LENDERS, LLC,)
et al.,)
Plaintiffs,)
vs.)
COMPASS USA SPE, LLC, et al.,)
Defendants.)

Case No.
3:07-CV-241-RCJ-VPC

In re: USA COMMERCIAL MORTGAGE)
COMPANY.)

Case No.
2:07-CV-892-RCJ-GWF

TRANSCRIPT OF PROCEEDINGS
OF
EVIDENTIARY HEARING
VOLUME 2
P.M. SESSION
BEFORE THE HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

Tuesday, October 2, 2007

Court Recorder: Araceli Catu

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES:

2 For Compass Financial LINDA DAKIN-GRIMM, ESQ.
Partners, LLC, and ROBERT J. MOORE, ESQ.
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LLC: GABRIEL WEAVER, ESQ.
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13 For the Plaintiff WALTER A. HERRING, ESQ.
and Defendant LLCs: NORLYNN B. PRICE, ESQ.
14 MICHAEL W. ANGLIN, ESQ.
MARK WEIBEL, ESQ.
15 Fulbright & Jaworski, LLP
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17 STANLEY W. PARRY, ESQ.
18 Ballard, Spahr, Andrews & Ingersoll, LLP
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19 Suite 1201
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20 For Donna Cangelosi ALAN R. SMITH, ESQ.
21 and the Lenders KEVIN A. DARBY, ESQ.
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25

1 APPEARANCES (Cont.):

2 For Silar Advisors, RANDOLPH L. HOWARD, ESQ.
LP: Kolesar & Leatham, Chtd.
3 3320 West Sahara Avenue
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4 Las Vegas, Nevada 89102

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1 So it's clear that the stay, the preliminary injunction
2 that I'm entering, is the result of these series of hearings
3 applies to any conduct to terminate rights relative to
4 Exhibit B.

5 Exhibit A is the universe of loans. Exhibit B, it's clear
6 these are the only ones that I'm staying. I'll require those
7 changes to the pending order, in addition to one other one I'll
8 talk about in a minute.

9 Now, as to the matters that you've presented to me here, I
10 do find that Ms. Cangelosi is in contempt of several of the
11 orders, and that there in soliciting the various limited
12 interests there were violations of securities laws. I'm not
13 going to order the return of those interests, but I'll tell you
14 what action I am going to take.

15 What I'm going to do is order that I will not -- in
16 contradicting Compass' complaint to stop you from exercising
17 those termination rights, I'm not going to recognize any
18 termination requests presented on behalf of L2L or the LLCs
19 formed.

20 And I'm doing that because this request is made in equity,
21 and she comes into court in responding to that with unclean
22 hands because of the contempt and because of securities
23 violations. Let me spell that out.

24 First, as to the securities violations, I believe there is
25 probable success on the merits of alleging securities

1 violations.

2 First, I'm determining as a matter of law that there is a
3 probability of success on a determination of law that these are
4 securities subject to the registration requirements.

5 That there are no apparent exceptions available, and,
6 therefore, there's a violation of securities laws in obtaining
7 these securities without registration.

8 Also, in a second manner that whether or not they're
9 exempt, they're still subject to 10(b)(5), and that there are
10 misrepresentations and omissions of appropriate representations
11 with respect to the issuance.

12 Just to be clear, I am not critical of Ms. Cangelosi's
13 efforts at all in all of the preliminary matters that she
14 engaged in, including attempting to organize the lenders, in
15 attempting to organize the lenders or soliciting their votes
16 for termination, in attempting to solicit people's combined
17 interest into an LLC in order to protect their interests, nor
18 am I criticizing any of the E-mail solicitations or the
19 attempts to communicate or provide a forum for communication as
20 I've already delineated, or any of the false statements or
21 allegedly false statements about Compass.

22 What I am criticizing is that she went over the border of
23 securities violation and misrepresentations when she solicited
24 securities to the extent that she would take over the servicing
25 rights, and she would take over the one-percent interest, and

1 she would have the right freely to compensate herself.

2 In essence, she was violating this Court and the
3 bankruptcy court's orders to not interfere with those rights.
4 She was usurping.

5 She was not a bidder, although she contemplated being a
6 bidder at the auction sale. The bid was closed and fairly
7 conducted. That order as far as I'm concerned is res judicata.

8 It may be subject to appeal, and it protected the
9 purchaser's right of title. It's a bankruptcy court order
10 transferring title. It's as good or better than a warranty
11 deed.

12 (Colloquy not on the record.)

13 THE COURT: And she attempted to usurp those rights.
14 She crossed the border in that respect. In so doing, she
15 violated securities laws or at least there's probable success
16 on the merits of so asserting, and she also violated those
17 Court orders.

18 Again, no criticism for organization efforts nor is there
19 even a criticism in her attempting to organize the direct
20 lenders in LLCs.

21 The violation was when those LLCs, a portion of the
22 motivation, was to usurp the purchaser's rights here. To that
23 extent, she violated securities laws and engaged in contempt.

24 With respect to the contempt, there are several orders
25 alleged. One is the confirmation order and the sale order

1 I certify that the foregoing is a correct transcript from
 2 the electronic sound recording of the proceedings in the
 3 above-entitled matter.

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/s/ Michele Phelps	10/08/07
<hr/> Michele Phelps, Transcriptionist	<hr/> Date

Exhibit B

Exhibit B

ORIGINAL

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

In re: USA COMMERCIAL MORTGAGE)
COMPANY.)
) Case No.
) 07-CV-892-RCJ-GWF
)
_____)

TRANSCRIPT OF PROCEEDINGS
OF
HEARING RE: EMERGENCY MOTION
REGARDING ENCUMBRANCE OF BENEFICIAL INTERESTS, NO. 481,
AND
OBJECTION RE: SAN FERNANDO LOAN PAYOFF, NO. 394
VOLUME 1
BEFORE THE HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

Monday, April 28, 2008

Court Recorder: Araceli Catu

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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APPEARANCES:

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For Mohave Canyon,
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Charles B. Anderson
Trust, and
Rita P. Anderson
Trust:

JANET L. CHUBB, ESQ.
Jones Vargas
100 West Liberty Street
12th Floor
Reno, Nevada 89501
(Telephonic)

Also Present:

DONNA CANGELOSI
The Lenders Protection Group
Representative

1 THE COURT: Who's her personal representation in
2 these cases?

3 MS. CANGELOSI: Your Honor, Mr. Alan Smith was, and
4 he withdrew.

5 THE COURT: So you're pro se, ma'am?

6 MS. CANGELOSI: Your Honor, I didn't know that I was
7 going to be put up on a trial today.

8 THE COURT: Yes. Well, that's why I'm letting you
9 know, and that's why I'm giving you clear caution as the
10 circuit requires.

11 You're on the verge of being held in contempt and
12 arrested, ma'am, and that's why I'm giving you very strong
13 caution before you speak pro se because I will consider what
14 you say.

15 MS. CANGELOSI: Then, your Honor, I'd like to speak
16 pro se.

17 THE COURT: You may, ma'am.

18 MS. CANGELOSI: Would you like me to stand here --

19 THE COURT: No.

20 MS. CANGELOSI: -- or come up there?

21 THE COURT: Right there is fine.

22 MS. CANGELOSI: Okay. Your Honor, in December, we --
23 we have had a funding issue with the pledge for the LLC pledge.

24 THE COURT: You sure have, and you didn't understand
25 my prior direction to you that you had violated securities laws

1 in soliciting these members?

2 And that before you could continue to represent them with
3 a short interim exception allowed you had to resolicit. You
4 didn't understand the Court to have said that.

5 MS. CANGELOSI: Your Honor, I have read the
6 transcripts over and over again --

7 THE COURT: You just didn't --

8 MS. CANGELOSI: -- sir.

9 THE COURT: -- get that.

10 MS. CANGELOSI: I read the transcripts over and over,
11 and I have also acted under advice of counsel. I was told over
12 and over again that the reiteration that was required was for
13 the terminations, your Honor.

14 THE COURT: Okay.

15 MS. CANGELOSI: I was under the --

16 THE COURT: Very good. I'm going to take what you
17 say at face value, ma'am, that you're not intentionally
18 disobeying the Court's order.

19 MS. CANGELOSI: No, sir.

20 THE COURT: So let's get it clear, and counsel for
21 Compass will take careful notes, and you'll prepare an order.

22 Number one, who is authorized to sign on behalf of the
23 LLC? Who is their managing member?

24 MS. CANGELOSI: The LLCs have authorized FDH which is
25 my company to manage it; however, we --

1 THE COURT: So FDH is a corporation.

2 MS. CANGELOSI: Yes, sir.

3 THE COURT: And who is authorized to sign on behalf
4 of FDH?

5 MS. CANGELOSI: In which regard, sir?

6 THE COURT: With respect to its role as managing
7 member of any and every LLC?

8 MS. CANGELOSI: Your Honor, as it relates to voting
9 processes with the Compass -- with the Compass payoff
10 processes, FDH is authorized.

11 As it relates to any encumbrance regarding pledges, the
12 individual members are the ones who sign. FDH does not pledge
13 any assets on behalf of the LLC.

14 THE COURT: Okay. It is the managing member, right?

15 MS. CANGELOSI: (No audible response.)

16 THE COURT: Okay. Here's the order. Within 30 days,
17 the managing member will sign reassignments of all assignments
18 of direct-lender interests back to the direct lenders within
19 30 days.

20 MS. CANGELOSI: Yes, sir.

21 THE COURT: Ms. Cangelosi personally and FDH and a
22 representative are commanded to be here -- we'll give you a
23 date on the calendar -- under order to show cause for contempt.

24 If she fails to obey this order, she'll be here with jail
25 threatened until she complies. It's civil contempt. It's not

1 we can certainly provide them forthwith with the --

2 THE COURT: Okay.

3 MS. PRICE: -- full set.

4 THE COURT: Provide them with a whole set.

5 MS. CANGELOSI: Your Honor, is it -- is it correct --
6 am I correct that your ruling is that Cross is out completely
7 as well in this?

8 THE COURT: Absolutely. That's a pure violation of
9 the standstill order.

10 MS. PRICE: Your Honor, we have evidence to show that
11 each and every individual lender member of the LLCs has voted,
12 has considered, and has spoken on whether to -- they have been
13 given equal access to a settlement proposal by Compass as well
14 as another option that if the settlement is unpalatable to
15 them.

16 And we've got evidence to put on as to how that was done.
17 We're happy to present that to the Court, and it's done on an
18 individual basis. There have been numerous lengthy, four- and
19 five-hour long, conference calls where members of Compass
20 were --

21 THE COURT: Um-h'm.

22 MS. PRICE: -- on the phone, members of Cross were on
23 the phone answering questions, providing the lenders with every
24 bit of information that they wanted. The balloting process has
25 been very, very aboveboard and is ongoing and it's almost

1 complete. It looks like --

2 THE COURT: Okay.

3 MS. PRICE: -- over 96 --

4 THE COURT: That's --

5 MS. PRICE: -- percent --

6 THE COURT: That's good. That's delightful, but the
7 clear message I've given heretofore and hopefully making it
8 very clear today is Ms. Cangelosi is out.

9 She will not negotiate. She will not forward proposals.
10 FDH will not be involved. They will not represent. They will
11 not participate in the mediation for anybody other than their
12 own interests. There were no longer be any withholding for the
13 LLCs, period, and that's absolutely clear. She's out.

14 MS. PRICE: There will no longer be withholding for
15 -- could you clarify that, your Honor?

16 THE COURT: There's no -- I think you understand.

17 MR. WEIBEL: Yes, your Honor, I do.

18 THE COURT: Make sure it's in the order.

19 MR. WEIBEL: Will do.

20 THE COURT: Okay. I'll expect the order this week,
21 and return within 30 days.

22 MS. PRICE: Your Honor, there was another matter on
23 the docket as well with respect to the San Fernando payoff.

24 That --

25 MR. MOORE: Your Honor, I believe that's what your

1 Honor just mentioned. That was whether or not the one percent
2 goes to the LLCs and FDH or -- excuse me -- to FDH or whether
3 it goes to the members and I interpreted --

4 THE COURT: It goes to the members.

5 MR. MOORE: -- your Court's comments as it goes to
6 the members.

7 THE COURT: That's right.

8 MS. CANGELOSI: Your Honor, that leaves Fulbright &
9 Jaworski with a \$3,000,000 bill that we can't satisfy, and the
10 pledge was less than \$3,000,000, your Honor.

11 THE COURT: You've been in contempt of the bankruptcy
12 court orders and the district court orders from day one,
13 Ms. Cangelosi, and Judge Riegler told you that, I told you that,
14 and you just went on your merry way. I'm sure there are people
15 here who want you to represent them, but there are how many,
16 1100 total direct lenders?

17 MR. MOORE: 3,000 directs, your Honor.

18 THE COURT: 3,000 direct lenders, ma'am, that you've
19 done a serious injury to.

20 So that's the order of the Court, and we'll make sure that
21 we now get some proper representation for the whole body.
22 That's where we're going.

23 MR. MOORE: Thank you, your Honor.

24 MR. HOWARD: Your Honor, if I might, Randolph Howard
25 for the Silar Advisors. We have three pending motions that

1 have not been calendared for hearing. Would the Court at
2 least --

3 UNIDENTIFIED SPEAKER: Sir, can you step over --

4 MR. HOWARD: -- consider --

5 UNIDENTIFIED SPEAKER: -- to the microphone, please.

6 MR. HOWARD: Very well. Your Honor, Randolph Howard
7 for Silar Advisors. We have three pending motions that have
8 been fully briefed and ready for hearing. I would request if
9 it pleases the Court that those be set for hearing likewise on
10 June 2nd.

11 THE COURT: I'll ask Madam Clerk to consider that.

12 THE CLERK: Yes, your Honor.

13 MR. HOWARD: Thank you.

14 THE COURT: Thank you so much, and thank you for your
15 appearance today.

16 (Colloquy not on the record.)

17 THE COURT: Ms. Chubb.

18 MS. CHUBB: Yes, your Honor.

19 THE COURT: You know, you're one of the people that I
20 trust --

21 MS. CHUBB: Thank you, your Honor.

22 THE COURT: -- so I failed to ask you for your input,
23 and I sincerely apologize for not getting your input. Did you
24 have anything to add?

25 MS. CHUBB: Well, I am concerned, your Honor, that if

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Michele Phelps
Michele Phelps
Michele Phelps, Transcriptionist

04/29/08
4/29/08
Date