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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

<p>In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.</p>	<p>Case No. 2:07-CV-892-RCJ-GWF-BASE and Case No. 3:07-CV-241-RCJ-VPC Bankruptcy Case No. BK-S-06-10725 LBR [Chapter 11]</p> <p>[Proposed] Order Denying LLCs’ Emergency Motion For Order Authorizing Encumbrance of Beneficial Interests</p> <p>Hearing Date: April 28, 2008 Hearing Time: 9:00 a.m. (Pacific Time)</p>
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On April 28, 2008, this Court conducted a hearing to consider the “Emergency Motion For Order Authorizing Encumbrance of Beneficial Interests Pursuant to Preliminary Injunction Order,” filed by the Plaintiff LLCs (with the exception of Hesperia Lenders, LLC and the two (2) SVRB entities) (the “LLCs”) on Monday April 21, 2008 (the “LLC Encumbrance Motion”). The LLCs filed a supplement to the LLC Encumbrance Motion on Tuesday April 22, 2008. On Thursday April 24, 2008, Compass Financial Partners LLC and Compass USA SPE LLC (together with their licensed sub-servicers and affiliates, “Compass”) filed their “Response of Compass to Emergency Motion For Order Authorizing Encumbrance of Beneficial Interests Pursuant to Preliminary Injunction Order,” together with the Declarations of Cade Liu and Gabriel Weaver in support thereof. At the hearing on Monday April 28th, Norlynn B. Price and Mark Weibel of Fulbright & Jaworski L.L.P. appeared on behalf of the LLCs. Robert J. Moore and Tyson M. Lomazow of Milbank, Tweed, Hadley & McCloy LLP, and Georganne Bradley of Bullivant Houser Bailey PC, appeared on behalf of Compass. Janet L. Chubb of Jones Vargas appeared on behalf of certain Plaintiffs that are not members of the LLCs. Randolph Howard of Kolesar & Leatham, Chtd. appeared on behalf of Silar Advisors, LP.

1 The LLC Encumbrance Motion requested that the Court enter an order authorizing, among
2 other things:

- 3 • the encumbrance in favor of two Texas entities called Cross Servicing Group, LLC
4 and Cross Litigation Management Company, LLC (together with any affiliates
5 thereof, "Cross") of either 2.5% or 5% of the beneficial interests in the various loans
6 that are the subject of the instant litigation (collectively, the "Loans") held by the
7 LLCs or by individual direct lenders (whether or not they are members of the LLCs)
8 for the purpose of obtaining litigation financing;
- 9 • the assignment to Cross of 50% of all recoveries in the form of awards, damages,
10 forfeitures, and disgorgements in the litigation; and
- 11 • granting to Cross, a third party with no independent interest in the litigation, "full and
12 unconditional authority (on behalf of the Direct Lender) to prosecute, defend,
13 negotiate, and pursue," and to manage "each and every aspect of the litigation"¹ (the
14 "Cross Transfer and Pledge Proposal").

15 This Court, having heard oral argument of counsel and other interested persons, having
16 read and considered all pleadings and papers filed in support of and in opposition to the LLC
17 Encumbrance Motion, and all Declarations and other pleadings and papers that are, in the opinion
18 of the Court, relevant to the issues before it; and the Court having found that Donna M. Cangelosi
19 ("Cangelosi"), the subject of that certain Contempt Order Re: Donna M. Cangelosi, entered
20 November 6, 2007, continues to take actions in violation of Orders of this Court, which such
21 actions are damaging to the holders of beneficial interests (the "Direct Lenders") under the deeds
22 of trust or mortgages securing the obligations under the Loan documents (the "Beneficial
23 Interests") and to Compass; and the Court having further found that Cangelosi did not give Direct
24 Lenders a proper disclosure of the mediated settlement proposal, and that Cangelosi is not able to
25 give a fair representation of mediation offers to the Direct Lenders; and for good cause otherwise
26 appearing:

27 _____
28 ¹ Language quoted from the "Election to Exercise Rights to ... Designate New Litigation
Manager With Power of Attorney," attached as Exhibit "H" to the Declaration of Gabriel Weaver
submitted with Compass's Response to the LLC Encumbrance Motion.

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

2 1. LLC Encumbrance Motion is DENIED. For each of the reasons identified on the
3 record of the April 28, 2008 hearing, including, but not limited to, the LLCs', FDH Management
4 Company's (in its capacity as Manager of each LLC, "FDH"), and Cangelosi's: (i) failure to
5 comply with prior rulings of this Court including their failure to make appropriate disclosures to
6 Direct Lenders who assigned their Beneficial Interests to the LLCs (collectively, the "LLC
7 Members") at the time of formation of the LLCs or thereafter; (ii) failure to make appropriate
8 disclosure to the LLC Members regarding the terms of the Cross Transfer and Pledge Proposal
9 and the mediated settlement proposal; and (iii) actions in negotiating and soliciting acceptance of
10 the Cross Transfer and Pledge Proposal, which were contrary to the Standstill Agreement so
11 ordered by this Court and impeded the mediation and settlement of the litigation, the LLC
12 Encumbrance Motion is hereby DENIED.

13 2. Cross Proposal is Disallowed and Ineffective. The LLCs, FDH, and the LLC
14 Members are PROHIBITED AND ENJOINED from accepting, consummating, or enforcing (or
15 attempting to accept, consummate, or enforce) the Cross Transfer and Pledge Proposal, any
16 aspect or variant thereof, or any other proposal from Cross. Any contracts or agreements between
17 Cross, on the one hand, and the LLCs, FDH, or any LLC Member, on the other, are VOID and
18 OF NO EFFECT.

19 3. Prior Votes For Cross are Ineffective. Any vote of an LLC Member that was
20 submitted to the LLCs, FDH or Cangelosi that was in favor of the Cross Proposal and against the
21 mediated settlement proposal (a "Prior Cross Vote") is not binding on such LLC Member, and is
22 of no force or effect. The LLCs, FDH, and Cangelosi are PROHIBITED AND ENJOINED from
23 submitting to any LLC Member any new ballot for voting on the Cross Transfer and Pledge
24 Proposal, a mediated settlement proposal, or any other matter. Compass is authorized to mail a
25 copy of a mediated settlement proposal to each LLC Member, directly. Each LLC Member is
26 authorized to notify Compass directly of such LLC Member's acceptance or rejection of such
27 mediated settlement proposal, notwithstanding any Prior Cross Vote submitted to the LLCs,
28 FDH, or Cangelosi.

1 4. Return of Beneficial Interests. Within thirty (30) days of the hearing date on the
2 LLC Encumbrance Motion (by May 28, 2008), the LLCs, FDH, and Cangelosi are Ordered to
3 return to each LLC Member any Assignment of Beneficial Interest previously executed to, or for
4 the benefit of, an LLC or FDH (an "Assignment"), together with a signed statement by FDH and
5 Cangelosi stating that such Assignment is null and void and of no force or effect, and forever
6 releasing any claim or entitlement to the proceeds of any Loan resolution in respect of such
7 Beneficial Interest. In addition, each LLC, together with FDH and Cangelosi, shall return to each
8 LLC Member any funds heretofore paid to or retained by any of them in respect of any such
9 Beneficial Interest. The LLCs, FDH, and Cangelosi shall not solicit, and are barred from
10 accepting, assignment of a Beneficial Interest from any Direct Lender.

11 5. Return of Powers of Attorney. Within thirty (30) days of the hearing date on the
12 LLC Encumbrance Motion (by May 28, 2008), the LLCs, FDH, and Cangelosi shall revoke and
13 return any Power of Attorney previously granted by an LLC Member to such LLC Member. The
14 LLCs, FDH, and Cangelosi shall not solicit, and are barred from accepting, any Powers of
15 Attorney from any Direct Lender.

16 6. FDH and Cangelosi are Barred From Action. FDH and Cangelosi (with respect to
17 any Beneficial Interest not held by her) are prohibited from taking any action on behalf of any
18 Direct Lender in any matter related to the instant litigation, including, but not limited to:

- 19 (a) participating in mediation of the litigation;
- 20 (b) responding to a proposed Loan resolution;
- 21 (c) servicing a Loan;
- 22 (d) terminating or designating the servicer of a Loan;
- 23 (e) negotiating with new counsel or retaining such counsel on behalf of any other Direct
- 24 Lender;
- 25 (f) seeking financing for litigation on behalf of any other Direct Lender;
- 26 (g) soliciting the power of attorney to act on behalf of another Direct Lender; or
- 27 (h) bringing an action or claim on behalf of any Direct Lender other than herself.

28 The foregoing notwithstanding, Cangelosi and FDH shall be permitted to take such actions as

1 may be necessary to effectuate the terms of this Order. Cangelosi may take such actions as are
2 appropriate with respect to her own Beneficial Interests.

3 7. Cross is Prohibited From Acting on Behalf of Direct Lenders. Cross is prohibited
4 from appearing in this litigation. Cross may not take any action on behalf of any Direct Lender in
5 any matter related to this litigation, including, but not limited to:

- 6 (a) participating in mediation of the litigation;
- 7 (b) responding to a proposed Loan resolution;
- 8 (c) servicing a Loan;
- 9 (d) terminating or designating the servicer of a Loan;
- 10 (e) negotiating for or retaining counsel on behalf of any Direct Lender;
- 11 (f) obtaining financing on behalf of any Direct Lender;
- 12 (g) soliciting the power of attorney to act on behalf of another Direct Lender; or
- 13 (h) bringing an action or claim on behalf of any other Direct Lender.

14 Cross shall be held accountable to this Court for taking an action inconsistent with the prior
15 rulings of this Court and the U.S. Bankruptcy Court for the District of Nevada in this proceeding,
16 including, but not limited to, any action which seeks to interfere with the rights acquired by
17 Compass from the chapter 11 estates of USA Commercial Mortgage Company and its debtor
18 affiliates.

19 8. Return of Withheld 1%. Notwithstanding the entry of any prior Order of this
20 Court to the contrary, Compass is authorized and directed to remit directly to each individual
21 LLC Member the proceeds of any Loan resolution that were previously withheld for the benefit of
22 an LLC or FDH in respect of such LLC Member's assignment to FDH of 1% of such LLC
23 Member's Beneficial Interest in a Loan as part of his, her, or its capital contribution to the LLC
24 formed with respect to such Loan. Furthermore, henceforth, Compass is authorized to direct the
25 proceeds of any Loan resolution due and owing to an LLC Member in accordance with the
26 Preliminary Injunction Order entered by this Court on November 6, 2007 directly to such LLC
27 Member, without the need to withhold such amounts as otherwise would be distributable based
28 upon the aforementioned 1% of such LLC Member's Beneficial Interest in such Loan.

1 9. New LLC Accounting. Within thirty (30) days of the hearing date on the LLC
2 Encumbrance Motion (by May 28, 2008), FDH, Cangelosi, and each LLC shall file with the
3 Court an updated accounting, effective as of the date thereof, specifying the following:

4 (a) the total dollar amount of Beneficial Interests purportedly held by the LLC with
5 respect to the applicable Loan (prior to the return of the Assignments ordered herein);

6 (b) identification of the Direct Lenders who had assigned to the LLC any Beneficial
7 Interests in such Loan;

8 (c) any voluntary rescission by a Direct Lender of its Assignment to an LLC;

9 (d) all payments received by each LLC, FDH, or Cangelosi (with respect to matters that
10 are the subject of this litigation) from any source, including Direct Lenders, Compass, borrowers,
11 or any third party;

12 (e) all payments made to Fulbright & Jaworski L.L.P. for work on behalf of the LLCs,
13 FDH, or Cangelosi, made by any entity, including the LLCs, FDH, Cangelosi or any third party.

14 (f) all sales, assignments, transfers, hypothecations or encumbrances of Beneficial
15 Interests by the LLC;

16 (g) all funds received by the LLC on account of such sales, assignments, transfers,
17 hypothecations or encumbrances;

18 (h) all requests to a borrower for payment on a Loan made by Cangelosi, FDH, the LLC
19 or, to the best knowledge of Cangelosi, FDH, or the LLC, any of such LLCs' members; and

20 (i) all Loan payoff proposals from a borrower received by Cangelosi, FDH, the LLC or,
21 to the best knowledge of Cangelosi, FDH, or the LLC, any of such LLCs' members.

22 10. Motion to Appoint Equity Receiver for LLCs. In the event Cangelosi fails to
23 effectuate the terms of this Order, the Court on its own motion has set an Order to Show Cause re
24 Civil Contempt for June 2, 2008. If at the time of that hearing, Cangelosi has not complied with
25 this Order, Compass is authorized and directed to file a Motion seeking the appointment of an
26 Equity Receiver for the LLCs for the express purpose of taking actions on behalf of the LLC
27 Members with respect to the matters pending before this Court.
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1 Submitted by:

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/s/ Paul M. Torres

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