

FILED & ENTERED

NOV 05 2009

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY harraway DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re:  
Meruelo Maddux Properties, Inc., a DE Corp,

Case No. 09-13356 KT

Chapter 11

Debtor.

**NOTICE OF RULINGS ON CERTAIN  
OBJECTIONS TO DEBTORS' MOTION FOR  
FINAL ORDER(S) AUTHORIZING USE OF  
CASH COLLATERAL AND USE OF  
DEBTORS' CASH MANAGEMENT SYSTEM  
AND ON RELATED RELIEF FROM STAY  
MOTIONS**

Affects all Debtors  
 Affects the following Debtor(s):

Date: October 19, and October 26, 2009  
Time: 9:00 a.m.  
Location: Courtroom 301  
21041 Burbank Blvd.  
Woodland Hills, CA 9136

Meruelo Maddux Properties, Inc. ("MMPI") and 53 affiliates each filed for relief under chapter 11 of the bankruptcy code on March 26 and March 27, 2009 (collectively, the "Debtors"). On April 7, 2009, an order was entered directing joint administration of the Debtors' related cases, naming MMPI as the lead case docket (Docket #30).

The Debtors filed several emergency motions at the beginning of these cases, including an emergency motion to approve continued use of the Debtors' cash management system including lending and borrowing between the Debtors on an unsecured basis (Docket #4) and an emergency motion to use cash collateral on an interim basis (Docket #11). On March 31, 2009, the Debtors filed a motion to use cash collateral beyond the emergency period (Docket #21).

1 On April 7, 2009, the motion was granted on an interim basis (Docket #367). The  
2 Debtors were authorized to use cash collateral through the conclusion of the final hearing in  
3 accordance with a budget attached to the motion. Each creditor whose cash collateral was  
4 subject to this order and its successor interim orders (the "Cash Collateral Creditors") has been  
5 "*granted, parri passu, as and for adequate protection against any diminution in the value of*  
6 *their separate interests in their collateral arising from the use of cash collateral pursuant to this*  
7 *Order, from on and after the petition date, March 27, 2009, a lien or charge against the 24*  
8 *unencumbered real properties identified in Exhibit "7" to the First Day Declaration [the*  
9 *"Unencumbered Properties"]*, and further, each of the Cash Collateral Creditors shall be and is  
10 *granted a replacement lien upon its respective collateral, all with the same extent, validity,*  
11 *scope and priority as the pre-petition liens held by each such Cash Collateral Creditor [the*  
12 *"Replacement Lien"]*." Final hearings were set for April 24 and, if necessary, April 27, 2009.

13 Due to the number of Cash Collateral Creditors objecting to the use of their cash  
14 collateral, particularly for lending and borrowing between the Debtors, and the cash  
15 management system which implemented the Debtors' use of the cash collateral, the hearings  
16 on these motions required numerous days in court, the evidentiary portion of which did not  
17 conclude until early October 2009. Challenges to the need for and adequacy of the offer of  
18 adequate protection require the court to value various real property assets in the Debtors'  
19 estates and to consider related arguments. Oral argument on most of the objections was held  
20 over two days at the end of October 2009. Several rulings were made on the record and  
21 others were submitted for ruling at a later time.

22 The purpose of this notice is to communicate rulings on those objections set forth below  
23 so that they may be incorporated into a single order on the Debtors' motion.

24 Cathay Bank

25 Debtor Alameda Produce, LLC owns real properties in downtown Los Angeles known  
26 as Alameda Square (also the headquarters of American Apparel) and Seventh Street Produce  
27 (the "Alameda/7<sup>th</sup> Street Properties"). Cathay Bank ("Cathay") holds a lien on the Alameda/7<sup>th</sup>  
28 Street Properties with an interest in the cash collateral generated thereby.

1 The parties dispute the value of the Alameda/7<sup>th</sup> Street Properties. Cathay's appraiser,  
2 David A. Zoraster, sets the value at \$79,600,000 as of April 2009. At the beginning of the  
3 case, the Debtor's expert, Richard Meruelo, set the value at \$109,700,000. As of the date of  
4 the commencement of this case, Cathay was owed \$59,976,415.

5 Using Cathay's figures, Cathay had an equity cushion of approximately 25% which will  
6 decline to approximately 15% by the end of March 2010, the period for which the Debtors seek  
7 to use Cathay's cash collateral. If the Debtors pay the post-petition property taxes (first half  
8 2009/2010 tax year), the impact on the equity cushion is a few 10ths of a percent.

9 In addition to the equity cushion provided by the value of the real property, the Debtors  
10 have offered the following as adequate protection for the use of Cathay's cash collateral until  
11 March 31, 2010:

- 12 1. a replacement lien in post-petition cash collateral;
- 13 2. payment of the normal and ordinary expenses for maintaining and preserving the  
14 real property collateral;
- 15 3. payment of post-petition real property taxes for the 2009/2010 year, i.e., that  
16 payment which is due November 1, 2009, and last payable without penalty by  
17 December 10, 2009.

18 The court notes that the exclusivity period expires in all of the Debtors' cases if plans of  
19 reorganization are not filed on or before November 22, 2009. The Debtors have informed the  
20 court that they intend to file their plans on or near that date. If the plans are confirmable, the  
21 process to do so can be completed by March 31, 2010, if the case is not delayed by litigation.  
22 The same is true if the plans are not confirmable.

23 Based on the value of the real property proposed by Cathay's appraiser, the court finds  
24 that Cathay is adequately protected by the Debtors' offer and no additional liens on  
25 Unencumbered Properties are required at this time.

26 Capmark Finance. Inc.

27 Debtor Santa Fe Commerce Center ("Santa Fe") owns real property in downtown Los  
28 Angeles known as Crown Commerce Center ("Crown Commerce Center"). Capmark Finance,

1 Inc.<sup>1</sup> (“Capmark”) holds a lien on Crown Commerce Center with an interest in the cash  
2 collateral generated thereby.

3 Incorporation as a Single Purpose Entity

4 Capmark opposes the Debtors’ use of Capmark’s cash collateral in their cash  
5 management system. The cash management system commingles cash from the various  
6 Debtors and, in some cases, uses that cash to benefit related debtor entities.

7 Capmark points out and Santa Fe does not dispute that Santa Fe’s articles of  
8 incorporation describe the debtor as a “single purpose entity” which, among other things, “shall  
9 not engage in any business or activity other than the ownership, operation and maintenance of  
10 [Crown Commerce Center].” The articles of incorporation further prohibit, among other things,  
11 (1) changing its legal structure (VII(b)); (2) modifying or failing to comply with the articles of  
12 incorporation without Capmark’s consent if the result adversely affects the debtor’s ability to  
13 perform its obligations (VII(c)); (3) commingling its funds or assets with those of another entity  
14 (VII(g)); and (4) becoming obligated on any debt other than the Lender’s debt (VII(o)). In short,  
15 the articles of incorporation were drafted to protect the Lender from just what has happened in  
16 this case, and more. Capmark argues that the bankruptcy court cannot approve actions which  
17 are outside the corporate authority of Santa Fe under state law.

18 The Debtors’ response is cursory, i.e., (1) that no violence is done to the articles of  
19 incorporation if Santa Fe’s actions are approved by the court; (2) that Santa Fe can seek to  
20 amend its articles of incorporation; and (3) that the restrictive provisions can be altered in a  
21 plan of reorganization.

22 The court’s view is that the articles of incorporation do not prevent Santa Fe from  
23 participating in the cash management system for the following reasons: (1) the articles of  
24 incorporation can be amended to remove the restrictions upon which Capmark relies; and (2)  
25 Capmark is not a member of the group that has authority to vote for or against amendments.  
26 Even if the articles were to retain the restriction on modifications or amendments that “would  
27

28 

---

<sup>1</sup> Capmark Finance Inc. is the Special Servicer acting for Wells Fargo Bank, N.A., successor by consolidation to  
Well Fargo Bank, Minnesota, N.A., as Trustee of the Registered Certificate holders of GMAC Commercial  
Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 2002-C1.

1 adversely affect the ability to perform its obligations....delivered in connection with...  
2 [Capmark's] loan," the primary purpose of adequate protection is to preserve Santa Fe's ability  
3 to perform its obligations in connection with Capmark's loan.

4 A failure to live up to promises to Capmark may be a breach of contract, but Capmark is  
5 not a shareholder, does not sit on the board of directors, and does not hold any office within  
6 Santa Fe. Any argument about rights as a third party beneficiary, absent Ninth Circuit law to  
7 the contrary, leaves Capmark vulnerable to arguments of improper interference with or control  
8 over Santa Fe's corporate business. Arguments about benefit of the bargain and indubitable  
9 equivalency must look not only at Capmark's standing to insert itself into the internal corporate  
10 affairs of Santa Fe but also to the purpose of these provisions which, presumably, is to  
11 preserve Santa Fe's ability to pay the debt. The harm to Capmark is that its lien on cash is  
12 impaired or destroyed by commingling. That is what adequate protection is for – to ensure that  
13 there is sufficient equity in Capmark's collateral to replace the cash or to give replacement  
14 collateral in other property of a value sufficient to protect Capmark's right to collect on that lien  
15 interest.

16 Dispute as to Pre-Payment Yield Charge of \$1,331,446

17 The parties have a dispute about the amount of Capmark's debt. Capmark's calculation  
18 of the debt includes a charge for a "prepayment yield" of \$1,257,582.37. See Declaration of  
19 Jackie Brome (Docket #730). The Debtors object to consideration of that charge in connection  
20 with this cash collateral matter on the grounds that (1) this charge is no longer applicable  
21 because the provision in the loan documents has expired by its terms; and (2) it is an  
22 unreasonable penalty. On consideration of the provisions in the promissory note related to the  
23 Yield Maintenance Pre-Payment Sum, ¶¶2.05 and 2.05(e), the court agrees, for the purposes  
24 only of this cash collateral matter, that this charge should not be included in the calculation of  
25 the debt.

26 Calculation of the Debt

27 After reviewing the elements of Capmark's debt calculation set forth in the adequate  
28 protection analysis chart in its bench brief, the court believes the total includes at least two  
sums which should be deleted for purposes of this motion. The first is the Yield Maintenance

1 Pre-Payment Sum of \$1,257,582.37 discussed immediately above, which should be deleted  
2 from the amount shown due under the note. The second is \$84,234.46 for real estate taxes  
3 first due on November 1, 2009. The revised calculation yields a debt total of \$11,480,809 as of  
4 October 31, 2009. The addition of \$93,844 in delinquent property taxes raises charges against  
5 the real property to \$11,574,653.

6 Dispute as to Fair Market Value

7 Capmark's appraisal sets the value of Crown Commerce Center at \$14,750,000 as of  
8 June 10, 2009. Richard Meruelo, for the Debtors, opines that the value is \$23,250,000. After  
9 reviewing the testimony and the appraisal, the court finds Capmark's valuation to be the more  
10 persuasive, with some adjustments. The Debtors' objection to Mr. Lofgren's appraisal  
11 methodology in accounting for the mezzanine space is well-taken. Instead of discounting the  
12 per square foot price for all space in the building based on the unoffending presence of the  
13 mezzanine, the adjusted sales price per square foot should have been applied to the available  
14 space without counting the mezzanine. This method does not give any value to the uses for  
15 which the mezzanine could be rented, but it does not penalize the existing non-mezzanine  
16 space. This one adjustment, which points to a value of \$15,721,680, pushes the lower end of  
17 Mr. Lofgren's reconciliation data for the sales comparison approach from \$14,181,058 (at \$58  
18 per square foot) toward the higher end, \$15,892,565 (at \$65.00 per square foot).

19 Mr. Lofgren reconciles value conclusions of \$14,500,000 for the sales comparison  
20 approach and \$14,750,000 for the income capitalization approach to reach a conclusion of  
21 \$14,750,000. Considering the testimony of Mr. Lofgren and Mr. Meruelo with regard to the  
22 location, access, utility (both present and permissible), the likely pool of purchasers, and the  
23 absence of newer, verifiable information, I find the value of Crown Commerce Center to be at  
24 least \$15,500,000.

25 Adequate Protection

26 At a fair market value of \$15,500,000, the equity cushion provided by Crown Commerce  
27 Center ranges from 12.6% using Capmark's calculation of the debt to 20.3% if the Yield  
28 Maintenance Pre-Payment Sum and post-petition property taxes are excluded.

1 At the high range, Capmark is adequately protected as a matter of law, absent unusual  
2 circumstances which are not presented in this case. At the low range, a measure of adequate  
3 protection in addition to the baseline protection offered by the Debtors is appropriate. Bearing  
4 in mind that the risk at this stage of the reorganization process should fall more heavily on the  
5 Debtors than on their creditors, the Debtors will be required to provide a measure of adequate  
6 protection greater than the baseline offer delivered to all other objecting creditors but less than  
7 that provided in cases where the range in the cushion provides less uncertainty.

8 The Debtors offer to provide the following adequate protection to Capmark for the  
9 use of its cash collateral through March 31, 2010:

- 10 1. a replacement lien in post-petition cash collateral;
- 11 2. payment of the normal and ordinary expenses for maintaining and preserving the  
12 real property collateral; and
- 13 3. payment of post-petition real property taxes for the 2009/2010 year, i.e., that  
14 payment which is due November 1, 2009, and last payable without penalty by  
15 December 10, 2009.
- 16 4. a set aside or other provision for roof repairs.

17 In addition to the foregoing, the Debtors must provide additional adequate protection in  
18 the form of a lien on one or more of the Unencumbered Properties in an amount equal to the  
19 lesser of (a) the actual amount of Capmark's cash collateral used from November 1, 2009, less  
20 direct expenses of maintenance and preservation of the real property collateral, and less any  
21 real property taxes paid and (b) the post-petition accruing interest at the default rate beginning  
22 on November 1, 2009. If the protection is measured by the use of the cash collateral, the  
23 estimated amount going forward will be the monthly average of the net amount as of the  
24 effective date of the calculation. The amount used under the allocation for general corporate  
25 overhead should be included in the amount to be protected.

#### 26 Liquidation Value and In re Case

27 The court notes that Capmark, and other lender participants in these bankruptcy cases,  
28 rely on In re Case, 115 B.R. 666, 670 (9<sup>th</sup> Cir. BAP 1990), for the proposition that the proper  
value for purposes of determining adequate protection under sections 361 and 363 is  
liquidation value. I disagree. The statement in Case to which they point is dicta in a chapter  
12 case in which the issues dealt with other matters entirely.

1           Mr. Meruelo As An Expert

2           This court ruled early in the Debtors' cases that Richard Meruelo, who has both  
3 management responsibilities and equity interests, either directly or derivatively, in the Debtors,  
4 qualified as an expert on the issue of valuation of the real estate holdings in these cases and in  
5 the real estate development market in downtown Los Angeles in particular. Capmark, among  
6 others, asserts that Mr. Meruelo, whose business for several years has been the purchase,  
7 development, and sale of numerous pieces of real property in downtown Los Angeles, is less  
8 qualified to opine as to value than a professional appraiser whose business is to synthesize  
9 market information in the abstract and select among the range of facts available to reach a  
10 defensible conclusion. There is no doubt a necessity to filter Mr. Meruelo's testimony through  
11 the lens of his personal self-interests, but there is a difference between bias and expertise. Mr.  
12 Meruelo's personal interest does not change otherwise provable or calculable facts or  
13 invalidate his experience.

14           United Commercial Bank

15           Debtor 2640 Washington Boulevard, LLC owns real property in downtown Los Angeles  
16 known by its address, 2640 Washington Boulevard (the "2640 Property"). United Commercial  
17 Bank ("UCB") holds a lien on the Property with an interest in the cash collateral generated  
18 thereby.

19           The parties dispute the value of the 2640 Property. UCB values the 2640 Property at  
20 \$4,150,000 which, if true, would make UCB undersecured. At the Debtors' value of  
21 \$7,172,000, the Debtors note that any equity cushion is di minimis. Therefore, the Debtors  
22 propose to provide, in addition to the basic elements of adequate protection offered to each  
23 objecting Cash Collateral Creditor, a lien or charge in one or more of the Unencumbered  
24 Properties in an amount equal to the lesser of the interest accruing at the non-default rate for  
25 the five-month period from November 2009, through March 31, 2010, or the actual cash used  
26 during the same five month period.

27           UCB asserts that it is entitled to protection both for the use of the cash collateral and  
28 against depreciation or decline in the market value of the 2640 Property. UCB rejects the  
Debtors' offers in favor of a theory that adequate protection must be equal to 20% of the

1 amount of UCB's loan (between \$1,200,000 and \$1,400,000) and then doubled to account for  
2 the risk that valuations of the 2640 Property and of the replacement collateral may be in error  
3 (raising the amount to at least \$2,800,000).

4 UCB's theory is interesting and inventive but not persuasive. In this case, where there  
5 is little or no equity cushion in the 2640 Property to protect UCB against the Debtors' use of its  
6 collateral, the Debtors must protect UCB against the loss of the cash that would otherwise  
7 have been available to pay down the debt.

8 UCB might also be entitled to protection against a decline in the value of the 2640  
9 Property. However, UCB has not pointed out any evidence of an actual decline during the  
10 course of the case, notwithstanding a common recognition that real estate markets are  
11 depressed and credit is scarce. The court disagrees that appropriate compensation for the risk  
12 of decline is somehow measured by the amount of the debt on this particular property.

13 It may be that the court should err in favor of protecting creditors when determining how  
14 much of the Unencumbered Properties should be required to stand as security for the  
15 adequate protection granted to various of the objecting Cash Collateral Creditors. That  
16 determination is yet to be made. However, it is not appropriate for the court to increase UCB's  
17 collateral by up to 58% of its own assessed valuation in order to compensate for market  
18 uncertainties that have not been quantified.<sup>2</sup>

19 The Debtors offer to provide the following adequate protection to UCB for the use of its  
20 cash collateral through March 31, 2010:

- 21 1. a replacement lien in post-petition cash collateral;
- 22 2. payment of the normal and ordinary expenses for maintaining and preserving the  
23 real property collateral; and
- 24 3. payment of post-petition real property taxes for the 2009/2010 year, i.e., that  
25 payment which is due November 1, 2009, and last payable without penalty by  
26 December 10, 2009. This provision was also part of the stipulated resolution of  
27 UCB's motion for relief from stay.

28 In addition to the foregoing, the Debtors must provide additional adequate protection in  
the form of a lien on one or more of the Unencumbered Properties in an amount equal to the

---

<sup>2</sup> UCB's request for adequate protection equal to a \$2,800,000 interest in the Unencumbered Properties represents a 67% increase over its own assessment of the value of the 2640 Property. A portion ranging between 9% and 15% would be attributable to the value of the actual cash collateral used by the Debtors.

1 actual amount of UCB's cash collateral used, from the commencement of the case, less direct  
2 expenses of maintenance and preservation of the real property collateral, and less any real  
3 property taxes paid. The estimated amount going forward will be the monthly average of the  
4 net amount as of the effective date of the calculation. The amount used under the allocation  
5 for general corporate overhead should be included in the amount to be protected.

6 California Bank & Trust

7 Debtor 788 South Alameda, LLC owns real properties in downtown Los Angeles known  
8 by its address, 788 South Alameda Street (the "788 Property"). California Bank and Trust  
9 ("CBT") holds a lien on the 788 Property with an interest in the cash collateral generated  
10 thereby.

11 For purposes of this cash collateral motion, the parties agreed to a value of the 788  
12 Property at \$9,333,333. The court previously ruled that costs of sale of 5.5% were  
13 appropriate. The court also previously determined that the equity cushion in the 788 Property  
14 did not provide sufficient adequate protection for the Debtors' use of CBT's cash collateral.

15 Since the commencement of these cases, the Debtors' use of a lender's cash collateral  
16 falls into two categories: (1) for payment of direct expenses to preserve and maintain the real  
17 property collateral; and (2) for other purposes, including payment of their corporate overhead  
18 and loans to benefit related debtors. Since no payments have been made to CBT since the  
19 commencement of the cases, the cash collateral at issue is the amount of cash generated by  
20 the 788 Property.

21 Cash collateral used to pay direct expenses to preserve and maintain the 788 Property  
22 does not require additional adequate protection because that use directly benefits CBT's  
23 collateral. The balance of the cash collateral is the amount for which protection is required.  
24 Since these figures should be relatively easy to establish, the parties are directed to confer in  
25 an effort to reach agreement.

26 The Debtors offer to provide the following adequate protection to CBT for the use of its  
27 cash collateral through March 31, 2010:

28

- 1 1. a replacement lien in post-petition cash collateral;
- 2 2. payment of the normal and ordinary expenses for maintaining and preserving the  
3 real property collateral; and
- 4 3. payment of post-petition real property taxes for the 2009/2010 year, i.e., that  
5 payment which is due November 1, 2009, and last payable without penalty by  
6 December 10, 2009.

7 In addition to the foregoing, the Debtors must provide additional adequate protection in  
8 the form of a lien on one or more of the Unencumbered Properties in an amount equal to the  
9 actual amount of CBT's cash collateral used, from the commencement of the case, less direct  
10 expenses of maintenance and preservation of the real property collateral, and less any real  
11 property taxes paid. The estimated amount going forward will be the monthly average of the  
12 net amount as of the effective date of the calculation. The amount used under the allocation  
13 for general corporate overhead should be included in the amount to be protected.

14 After listening to and considering anew Mr. Bingham's arguments at the hearing, I have  
15 a better appreciation for the Debtors' initial offer in this case, including the rationale for offering  
16 additional adequate protection on a go-forward basis only. However, while I recognize that  
17 CBT is oversecured and that it is not the extent of the equity cushion that must be protected, it  
18 is appropriate under the circumstances of this case, at this point in the case, to err on the side  
19 of granting more rather than less protection to the affected creditor. More particularly, we do  
20 not have information yet about the proposed treatment of claims in a plan of reorganization,  
21 about how such treatment or reorganization strategy will fit with the other debtors in this  
22 enterprise, or how long it will take within this next five months to know whether plans can be  
23 confirmed.

24 425 West 11<sup>th</sup> Street

25 Debtor Merco Group – 425 West 11<sup>th</sup> Street owns real properties in downtown Los  
26 Angeles known by its address, 425 West 11<sup>th</sup> Street (“425 West 11<sup>th</sup> Street”). Legendary  
27 Investors Group No. 1, LLC (“Legendary”) holds a lien on 425 West 11<sup>th</sup> Street with an interest  
28 in the cash collateral generated thereby.

The parties hugely diverge in their assessments of the value of the underlying property.  
As a result, Legendary's appraisal, the testimony of Legendary's appraiser Steven Kerhart,  
and the testimony of Richard Meruelo have been reviewed in detail more than once.

1 Richard Meruelo's valuation contains a number of persuasive general assumptions but  
2 is short on foundational detail that would allow assessment of his conclusion that the value of  
3 425 West 11<sup>th</sup> Street is \$12,200,000 in the present market. In addition, his reliance on past  
4 valuations, including offers in 2008 for which there is no verification, do not adequately address  
5 the impact of the decline in sales and credit transactions following the nation's recent  
6 economic meltdown.

7 Legendary's appraisal also falls short. I am troubled by variants with a prior appraisal  
8 on the property done by the same appraisal firm approximately 18 months previously. An  
9 inconsistency pointed out by the Debtors at the hearing resulted in an upward revision of the  
10 appraiser's conclusion from \$6,070,000 to \$6,270,000. The Debtors also pointed out that the  
11 ground floor market rent 18 months ago was valued at twice the rent for the upper floors,  
12 whereas, in the present appraisal, the ground floor is valued the same as the upper floors.  
13 The methodology of valuation should not be affected by the general downturn in the real estate  
14 and credit markets. The change has not been satisfactorily explained.

15 I am also concerned about inconsistencies in the current appraisal. For example, when  
16 analyzing rental data for the income approach on the Desmond building, the appraisal adopts  
17 a vacancy and collection loss factor of 6% in the narrative on page 75 and 10% in the chart on  
18 page 80. When asked, the appraiser said that the 6% figure was in error and should have said  
19 10%. The narrative itself supports the 6% figure. The appraiser cites Costar reports that  
20 indicate an overall vacancy rate in the Los Angeles Central Business District at 10.1% at the  
21 end of the first quarter of 2009 and then explains that this figure is skewed by high vacancy  
22 rates for Class-A and Class-B space. However, for Class-C office space, which is the  
23 classification of the Property in Kerhart's appraisal<sup>3</sup>, the vacancy rate for the second quarter  
24 2009 was just 4.1%. So, it appears that even the 6% figure is an unexplained compromise in  
25 favor of a lowered valuation. According to the data sources, the current vacancy rate within  
26 the downtown Los Angeles submarket is 5.2%. The use of 6% vs. 10% has significant impact  
27

28  

---

<sup>3</sup> Richard Meruelo, who supports other development potential in the Property, testified that the Desmond building, which is about 100 years old, has never been used as office space.

1 on the bottom line, raising the as-is stabilized market value from \$7,662,917 to \$8,098,012,  
2 even when all other factors remain the same.

3 Additional criticisms of Legendary's appraisal deserve comment. First, Legendary's  
4 appraiser gives no weight to the property's location in the Southpark area, near the revitalized  
5 redevelopment area dominated by the Staples Center and LA Live. This point has validity and  
6 the rebuttal was unpersuasive. Second, no separate value was given to the parking lot even  
7 though it is a separate parcel which could be sold for an amount which the Debtors assert to  
8 be excess of \$6,000,000 but which certainly is in excess of \$1,000,000. This point also has  
9 validity but must be tempered with recognition that separating the parcels might also have a  
10 negative impact on the value of the Desmond building.

11 After adjusting various components of Legendary's appraiser's calculations and the  
12 assumptions on which they are based, assessing the impact of these adjustments on the  
13 bottom line, and considering the methodologies of valuation, I conclude that the fair market  
14 value of 425 West 11<sup>th</sup> Street as of August 31, 2009, is no less than \$7,400,000.

15 The Debtors also challenge several of the components of Legendary's debt calculation.  
16 The court has made two adjustments to its own calculations in consequence. First, after  
17 considering the dispute as to Legendary's addition of a late charge equal to 6% of the principal  
18 balance, that amount has been deducted from the calculation for purposes of this matter only.  
19 Second, the so-called carrying charges of \$329,300 for 8 months interest and late charges  
20 have been deducted from the calculation of the equity cushion as of August 31, 2009, and  
21 considered, instead, as a factor in assessing adequate protection.

22 In summary, Legendary has an equity cushion provided by the value of 425 West 11<sup>th</sup>  
23 Street which ranges from 10.9% to 14.3%, depending on whether Legendary's debt includes  
24 the disputed late charge. This cushion does not contain any carrying costs. Consequently,  
25 that cushion will decline over the September through March period during which the Debtors  
26 propose to use Legendary's cash collateral to less than 10%.

27 The Debtors offer to provide the following adequate protection to Legendary for the use  
28 of its cash collateral through March 31, 2010:

- 1 1. a replacement lien in post-petition cash collateral;
- 2 2. payment of the normal and ordinary expenses for maintaining and preserving the  
3 real property collateral; and
- 4 3. payment of post-petition real property taxes for the 2009/2010 year, i.e., that  
5 payment which is due November 1, 2009, and last payable without penalty by  
6 December 10, 2009.

7 In addition to the foregoing, the Debtors must provide additional adequate protection in  
8 the form of a lien on one or more of the Unencumbered Properties in an amount equal to the  
9 lesser of (a) the actual amount of Legendary's cash collateral used, from the commencement  
10 of the case, less direct expenses of maintenance and preservation of the real property  
11 collateral, and less any real property taxes paid; and (b) the post-petition accruing interest at  
12 the default rate. If the protection is measured by the use of the cash collateral, the estimated  
13 amount going forward will be the monthly average of the net amount as of the effective date of  
14 the calculation. The amount used under the allocation for general corporate overhead should  
15 be included in the amount to be protected.

16 Legendary moved for relief from stay as to 421 West 11<sup>th</sup> Street. Based on the  
17 foregoing considerations and conclusions, the adequate protection set forth above provides  
18 appropriate relief under Section 362(d)(1). Legendary's motion is otherwise DENIED, without  
19 prejudice.

20 ###

21  
22  
23  
24  
25  
26 DATED: November 5, 2009

27  
28  
  
United States Bankruptcy Judge

**NOTE TO USERS OF THIS FORM:**

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

**NOTICE OF ENTERED ORDER AND SERVICE LIST**

Notice is given by the court that a judgment or order entitled **NOTICE OF RULINGS ON CERTAIN OBJECTIONS TO DEBTORS' MOTION FOR FINAL ORDER(S) AUTHORIZING USE OF CASH COLLATERAL AND USE OF DEBTORS' CASH MANAGEMENT SYSTEM AND ON RELATED RELIEF FROM STAY MOTIONS**

was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of 11/5/09, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Service information continued on attached page

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail to the following person(s) and/or entity(ies) at the address(es) indicated below:

Service information continued on attached page

**III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below:

Service information continued on attached page

1 John J Bingham jbingham@dgd.com  
Jennifer L Braun jennifer.l.braun@usdoj.gov  
2 Martin J Brill mjb@lnbrb.com  
Howard Camhi hcamhi@ecjlaw.com  
3 Ronald R Cohn rcohn@horganrosen.com  
Michaeline H Correa mcorrea@jonesday.com  
4 Brian L Davidoff b davidoff@rutterhobbs.com, calendar@rutterhobbs.com,  
jreinglass@rutterhobbs.com  
5 Aaron De Leest aed@dgd.com  
Michael G Fletcher mfletcher@frandzel.com, efilng@frandzel.com, shom@frandzel.com  
6 Donald L Gaffney dgaffney@swlaw.com  
Thomas M Geher tmg@jmbm.com  
7 Bernard R Given bgiven@frandzel.com, efilng@frandzel.com, shom@frandzel.com,  
bgiven@frandzel.com  
8 Barry S Glaser bglaser@swjlaw.com  
John A Graham jag@jmbm.com  
9 Asa S Hami ahami@sulmeyerlaw.com  
Brian T Harvey bharvey@buchalter.com, IFS\_filing@buchalter.com  
10 Michael S Kogan mkogan@ecjlaw.com  
Tamar Kouyoumjian tkouyoumjian@sulmeyerlaw.com  
11 Duane Kumagai dkumagai@rutterhobbs.com, calendar@rutterhobbs.com  
Steven K Linkon slinkon@rcolegal.com  
12 Elmer D Martin elmermartin@msn.com  
Elissa Miller emiller@sulmeyerlaw.com  
13 Iain A W Nasatir inasatir@pszjlaw.com, jwashington@pszjlaw.com  
Lawrence Peitzman lpeitzman@pwkllp.com  
14 Eric S Pezold epezold@swlaw.com, dwlewis@swlaw.com  
Craig M Rankin cmr@lnbrb.com  
15 Michael B Reynolds mreynolds@swlaw.com, kcollins@swlaw.com  
Martha E Romero Romero@mromerolawfirm.com  
16 Victor A Sahn vsahn@sulmeyerlaw.com  
James Stang jstang@pszjlaw.com  
17 John N Tedford jtedford@dgd.com  
Alan G Tippie atippie@sulmeyerlaw.com, jbartlett@sulmeyerlaw.com  
18 United States Trustee ustpreion16.wh.ecf@usdoj.gov  
Jasmin Yang jyang@swlaw.com  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28