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Cabi Downtown bankruptcy to go forward

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Bank of America and its attorneys were forced to admit in court Thursday that they filed false accusations in an attempt to have the bankruptcy of developer Cabi Downtown dismissed.

As a result, U.S. Bankruptcy Judge Laurel Isicoff said she will allow the Chapter 11 bankruptcy to move forward to a confirmation hearing, and said she would consider sanctions against BofA's attorneys.

"I don't know what you all were thinking. I don't know what else to say," Isicoff said, according to a transcript of Thursday's bankruptcy hearing. "I am going to issue an order to show cause why Bank of America and its counsel should not be sanctioned for the cost of all attorneys appearing at this hearing today for filing this motion and the affidavit."

A spokeswoman from Bank of America said it has no comment on the case or recent developments. Its attorneys on the case are from Kaye Scholer and Shutts & Bowen.

The bankruptcy of the 49-story, twin-tower Everglades on the Bay is one of the biggest real estate bankruptcies in Miami. The bankruptcy was filed Aug. 18 after BofA refused to allow write-downs of sales prices. The same day, the bank filed a foreclosure – one of the first hostile foreclosure actions on a condo tower in Miami in recent history.

The case is an example of what BofA and other large lenders are enduring as the real estate bust wrecks havoc on many large condo loans.

The bank said Cabi was violating guidelines that were agreed upon before the developer started a new lease-to-own program. The bank alleged that Cabi's leasing program "has damaged the value" of Everglades on the Bay, which "amounts to waste," a bank filing states.

In response, Cabi attorneys said in an interview that the bank's accusations range from "outright falsehoods to gross mischaracterizations of the facts."

For example, the bank had cited a tenant in the building with a common Latin name. The bank alleged the man was a convicted felon who had lived in Wisconsin.

But, attorneys for Cabi said the tenant in their building never lived in Wisconsin.

"The debtor believes the deferred purchase program is a success story," said Andrew Glenn, one of Cabi's bankruptcy attorneys with Kasowitz, Benson, Torres & Friedman LLP in New York. "Bank of America's own appraiser said that, to maximize value, any investor would enter into a similar program."

Glenn said the developer is concerned that because the bank's allegations have been aired in public it could result in some damage to the developer. He also said Bank of America and other lenders have taken over other buildings that have more units than Everglades on the Bay.

"Our concern is they are conflicted and one of the reasons driving their conduct is, they want to get a competitor out of the marketplace," Glenn said.

He said the developer is gratified that the judge accepted its appraisal of \$185 million, and rejected Bank of America's at \$118 million. Glenn said the developer has other assets.

"One is the deposits that will be forfeited. There is pending litigation over that, but we expect that to be resolved and to realize a benefit of at least \$15 million," Glenn said.

Glenn said the rental program has been a surprising success, contributing to a 40-percent occupancy in the building, when it was practically empty just a few months ago.

He said the company proposed guidelines, not rules, for the leasing program, and it has largely stuck to them.

BofA had filed the allegations about the leasing program as an emergency motion. Isicoff said during the hearing that the motion clearly was not an emergency.

"Having heard the evidence ... I find that the debtors do have a legitimate intent to reorganize, and that the debtor did not file this case for the sole purpose of frustrating Bank of America's exercise of its rights as a secured creditor and, therefore, I find that the case was not filed in bad faith," Isicoff said. But, she added that the developer still must prove it can make the financial numbers work for a reorganization.

While many condo developers have similar rent-to-own programs, this one is somewhat novel because it is being played out in federal bankruptcy court.

When it entered bankruptcy, the 849-unit building had sold 739 units, but only closed on 122. There are now 249 units in the deferred purchase program. Both of the towers are being rented.

Mindy Mora, Cabi's lead bankruptcy attorney, said the company has restored all damage from a water leak in the towers, and the project is now 99 percent complete.

At the time of the bankruptcy filing, the \$300 million project still owed \$209 million on its BofA-led mortgage. A January 2009 appraisal of the twin towers on Biscayne Boulevard, ordered by the bank, stated the project is worth \$205 million. The latest appraisal, in October, stated a value of \$184.5 million.

Cabi, owned by Mexican developers from the Cababie family, had proposed a new loan of \$215 million in secured senior notes on which the lenders would get LIBOR (the London Interbank Offer Rate) plus 1 percent. The developers later upped that to LIBOR plus 2.5 percent – about 3.35 percent based on a recent rate of 0.85 percent for one-year LIBOR.