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BofA balks at lower payoff on condo towers

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One of the biggest new condominium towers in downtown Miami is trying to force lenders, led by **Bank of America**, to accept a relatively tiny payoff on financing for the project.

The 849-unit Everglades on the Bay filed for bankruptcy Aug. 18 after BofA refused to allow write-downs on unit sales. The same day, the bank filed a foreclosure – one of the first hostile foreclosure actions on a condo tower in Miami. The case could provide an example of what BofA and other large lenders must endure as the real estate bust wreaks havoc on many large condo loans.

The developer – the Cababie family of Mexico – has submitted a proposal to the bankruptcy court to sell units over a seven-year loan payoff period. The family proposed a new loan in secured senior notes of $215 million on which the lenders would only get a return rate of LIBOR plus 100. That is the rate lenders charge each other, plus 1 percent.

At the time of the bankruptcy filing, the $300 million Everglades on the Bay project still owed $209 million on its BofA-led mortgage. A January 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.

In a recent court hearing in Miami, an attorney for the bank reacted with indignation at the low rate of return.

“Is this investment less risky than a five-year Treasury bill?” asked H. Peter Haveles Jr., of Kaye Sholer in New York. “Have you ever seen a bank give a loan for a property like this at LIBOR plus 100?”

Haveles said the original loan anticipated a return of LIBOR plus 300, where 300 equals 3 percent.

Haveles grilled Paul Rubin of the **Algon Group**, a financial adviser for the Cababie family’s company, Cabi Downtown, during a hearing on the bank’s motion to dismiss the bankruptcy.

“This is a busted condo project,” Rubin replied. “There’s nothing in the past to compare it to here.”

Rubin said the bank’s risk should be considerably less than when the original loan was made several years ago, even with the recession factored in, because the project is already built. The developers have said remaining work includes punch-list items, repairing water damage in some units and finishing penthouses.

MARKETING THE BUILDING

Rubin’s plan envisions marketing the building with a lease-purchase program for years as the market recovers, and closing on most units in 2015 and 2016.

Haveles asked Rubin where the project would get money to pay off construction liens and finish the needed work. The project currently has a temporary certificate of occupancy.

Rubin said the project could pull some money from various sources, including an insurance fund that wasn't completely tapped, and $1.5 million for improvements to retail space that wasn't needed yet.

Deciding the case is U.S. Bankruptcy Judge Laurel Isicoff.

The *Business Journal* was first to report the bankruptcy of Cabi Downtown on Aug. 18, and reported on the standoff with Bank of America two weeks later. The bank did not allow the developer to reduce the sales price on condo units, according to the bankruptcy case management summary.

The original $256 million construction loan on the twin-tower project was made by Bank of America. The mortgage had a November 2008 maturity date that was extended a couple of months, to Feb. 18.

An April 3 *South Florida Business Journa*l article said the project was swamped with issues, such as contractor liens and reluctant buyers.

The petition was filed as a single-asset real estate bankruptcy, which typically means the bank holding the primary mortgage on the property can have the bankruptcy dismissed in 90 days if a suitable reorganization plan is not approved.

The project, at 244 Biscayne Blvd., on the former site of the Everglades Hotel, sits among a handful of other high-profile condo projects on downtown Miami's main thoroughfare. The city is suffering from a glut of units from a now-crashed building boom.

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