

Bond Case Briefs

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BANKRUPTCY - PENNSYLVANIA

In re T.H. Properties, LP

United States Bankruptcy Court, E.D. Pennsylvania - October 2, 2013 - B.R. - 2013 WL 5464245

The Debtors are residential real estate developers. They proposed a Chapter 11 plan wherein the equity owners would retain their interests. Because the plan did not propose to pay creditors in full, this posed absolute priority problems. The owners addressed that problem by making a “new value” contribution. This contribution was in the form of real property, three phases (Phases IV, V, and VI) of the land referred to as Northgate. The Debtors had no interest in any of the three properties. The contribution of the Northgate phases to the plan constituted the “new value” necessary to satisfy the absolute priority rule and to obtain confirmation.

The mechanics of the transfer of the real estate are of central importance. The Northgate phases were contributed under a Transfer and Development Agreement (TDA). Under the TDA, the Northgate phases were to be transferred to the Debtor on the Effective Date and then immediately transferred out, either to New Stream Real Estate, LLC, the lienholder on Northgate, or its designee. The Debtors retained an ownership interest in Northgate to the extent of any net profits from Phases IV and V. Those profits would pay creditors under the plan.

New Stream designated an entity known as GSRE 25 LLC to receive the Northgate property from the Debtor. GSRE 25 has commenced development and sale of the Northgate properties. Operating under the belief that no transfer tax applies, title companies have assisted in the sales without requiring payment of transfer tax. This prompted the Township’s complaint.

The Township’s motion for summary judgment was granted. Future transfers made by GSRE 25, LLC, or any other non-debtor third party grantor, to any third party purchaser/grantee of the Northgate subdivision are not exempt from applicable transfer taxes. Further, judgment was entered in favor of the Township in the amount of the uncollected local transfer tax for those properties already sold.