

SIGNED.



Dated: April 29, 2010

*James M. Marlara*  
JAMES M. MARLAR  
Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re: ) Chapter 11  
PHOENIX PLAZA APARTMENTS, LLC, ) No. 2:10-bk-02972-JMM  
Debtor. ) **MEMORANDUM DECISION**

On April 28, 2010, this court took evidence on the issue of whether a state court receiver, Greystar Management Services, appointed pre-filing by the Maricopa County Superior Court, should be compelled to turn over the Debtor's property to the Debtor, or whether the receiver should remain in possession until further bankruptcy court orders (DN 16).

The testimony of both the state court receiver, and the Debtor's principal, was taken. On some factual issues, such as the condition of the property, the testimony differed dramatically. The court concludes that secured creditor Federal National Mortgage Association ("FNMA") carried its burden, by a preponderance of the evidence.

After review of the entire administrative file, the documents admitted into evidence, and the testimony, the court concludes that it is in FNMA's best interests to retain the state court receiver in possession. The court's reasons follow:

1. The secured creditor's debt is \$4,437,714.13 (Schedules A and D). Because the unsecured creditors (non-insiders) only have scheduled debts of \$31,330.84 (Schedule E), the secured creditor's claim constitutes 99.993% of the Debtor's total debt. Therefore, by far, it has the largest stake in the case, and also the greatest risk, as it has first

1 claim to the real property collateral (Ex. 3), due to its recorded Deed of  
2 Trust.

3 2. The Note in favor of the secured creditor is fully matured, and all  
4 became due and payable according to its terms on July 1, 2009 (Ex. 2).  
5 The Debtor assumed this obligation (Ex. 5). A Trustee's sale was in  
6 process when the bankruptcy case was filed on February 5, 2010  
7 (Motion, DN 16, at 2, lines 7-9).

8 3. Pre-petition, after a fire damaged the premises, he Debtor deposited  
9 checks, made jointly payable to itself and the secured creditor, into a  
10 bank account controlled by the Debtor. No evidence was presented that  
11 the secured creditor knew or consented to that action. The Debtor had  
12 no legal right to deposit those funds without the secured creditor's  
13 consent or endorsement. Moreover, the Debtor did not use the funds to  
14 repair the fire-damaged premises. (Ex. 12.)

15 4. The Debtor has not yet filed a plan of reorganization and gave no  
16 specifics as to the method by which it could confirm a feasible plan.  
17 when asked directly how it intended to repay the secured debt, Mr.  
18 Grinwald (the Debtor's principal) testified, "I don't know."

19 5. The receiver is regularly filing accountings with the Superior Court.  
20 Those records are public. Should the Debtor desire that such  
21 accountings also be filed with the Bankruptcy Court, any such motion  
22 would be granted, even on an *ex parte* basis. Sharing such information  
23 is useful and necessary to the reorganization. (*See* Ex. D, E, F, G,  
24 and H.)

25 6. The court was not persuaded that the receiver is doing a poor job, nor  
26 is incompetent.

27 7. It is in the creditor's best interest to retain the receiver, and thus excuse  
28 compliance with the turnover request. 11 U.S.C. § 543(d)(1).

1                   Consequently, an order will be entered which excuses the receiver from the turnover  
2 requirements of the Bankruptcy Code, until further order of the court (DN 16). The Debtor's request  
3 for turnover will be DENIED (DN 24) and the court will order retention of the receiver, in  
4 possession of the Debtor's property, and so remain until further order of this court.

5                   A separate order will issue. FED. R. BANKR. P. 9021.

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7                   DATED AND SIGNED ABOVE.

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9 COPIES to be sent by the Bankruptcy Notification  
10 Center ("BNC") to the following:

11 The Honorable Eileen S. Willett  
12 Maricopa County Superior Court  
201 W Jefferson St CCB 4B  
Phoenix, AZ 85003-2244

13 Lori Winkelman, Attorney for Federal National Mortgage Association

14 Thomas G. Luikens, Attorney for Debtor

15 Office of the U.S. Trustee  
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