

RECEIVERSHIP IN COMMERCIAL FORECLOSURE IN ILLINOIS

Commercial Mortgagees in Illinois who are eagerly awaiting a judgment for foreclosure and title to the property may seek to appoint a receiver to manage and operate the property during the foreclosure process. A receiver can provide valuable service in collection of rents, handling of the day to day operations of the property including insuring the property, accounting and payment of taxes and other fees, managing of existing tenants, negotiating of new leases and avoiding waste and destruction. In Illinois, receiver appointments are governed by 735 ILCS 5/15-1701. Specifically, Section 15-1701(b)(2) of the Act provides that in mortgage foreclosure cases involving non-residential real estate, a mortgagee is entitled to be placed in possession of the property prior to the entry of a judgment of foreclosure upon request, provided that the mortgagee shows (1) that the mortgage or other written instrument authorizes such possession and (2) that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause. However, if the mortgagor objects and demonstrates “good cause,” the court shall allow the mortgagor to remain in possession. The Act creates a presumption in favor of the mortgagee’s right to possession of non-residential property during the pendency of a mortgage foreclosure proceeding.

Illinois Appellate Courts, in a recent line of cases, have addressed the issue of what constitutes “good cause” albeit by rejected arguments demonstrating “good cause.” Among the rejected arguments was that Plaintiff failed to allege fraud, waste, mismanagement or other dissipation of the mortgaged real estate. Another failed argument included the demonstration of “good cause” as the harm that would be incurred by the mortgagor if a receiver was appointed outweighed the harm incurred by the mortgagee if the mortgagor remained in possession of the property. Finally the Court rejected the argument that the current management of the real estate property is more qualified than the receiver.

Nevertheless, in *Centerpoint Properties Trust v. Old Prairie Block Owner LLC*, 398 Ill.App.3d 388, 923 N.E.2d 878 (1st Dist, 2010) the Court discussed circumstances that may constitute “good cause.” The Court stated that evidence of an “imminent” funding for the development of the property or an “imminent” loan to refinance may persuade the Court to find “good cause” to permit the mortgagor to retain possession of the subject property in the interim. The Court stressed that the transaction would have to be “imminent” and not merely a possibility at some unknown future date.

In sum, there is a strong presumption in favor of the mortgagee seeking to appoint a receiver in commercial foreclosure cases. The mortgagor’s burden of demonstrating “good cause” as to why a receiver should not be appointed is rather difficult to overcome.

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