

Investors Can't Get \$614M In Fees From Stuy Town Sale

By **McCord Pagan**

Law360 (March 20, 2020, 11:03 PM EDT) -- A New York federal judge has ruled that more than \$614 million in disputed funds stemming from the \$5.3 billion sale of New York housing complex Stuy Town in 2015 can't be sent to certain investors in the underlying defaulted mortgage on the property.

U.S. District Judge Katherine Failla on Thursday largely ruled against Appaloosa Management in a lawsuit involving the proper allocation of proceeds from the sale of the Stuyvesant Town-Peter Cooper Village apartment complex in Manhattan.

Judge Failla said that the \$614 million in disputed funds should stay with CWCapital Asset Management LLC, which earned the money for overseeing the property following the 2010 default of Tishman Speyer Properties and BlackRock Realty, according to the suit.

The decision could turn a corner in four years worth of litigation stemming from the 2010 default of loans on the Stuy Town complex following the Great Recession.

Stuy Town was sold in 2015 to units of Blackstone LP and Ivanhoe Cambridge Inc., and proceeds from that sale exceeded the unpaid principal interest due on the mortgage, according to court documents.

In addition to the \$614 million paid to CWCapital, a portion of the proceeds from the 2015 sale went to the government-sponsored entities, Fannie Mae and Freddie Mac, which had a senior status on the investment and were higher up on the so-called "waterfall" allocating proceeds from the sale, Judge Failla said.

The government-sponsored entities were paid through yield maintenance fees, which were essentially a prepayment penalty on the mortgage, while CWCapital was paid for its role as a special servicer and collected mortgage loans and enforced its terms, the court said. CWCapital also was responsible for allocating proceeds of the loan according to the waterfall seniority, in which the government-sponsored entities were higher up than Appaloosa.

Under CWCapital's analysis of the waterfall priority, it identified about \$50 million in "gain-on-sale proceeds" money left over after fee payment, for junior noteholders such as Appaloosa, the court said.

All the certificate holders in the trust were paid in full from the Stuy Town sale, Greg Cross of Venable LLP, counsel for CWCapital said.

"What the court found is that CWCapital applied the proceeds from the sale of Stuy Town just the way it'd been applied in the 30 year history of [commercial mortgage backed securities]," Cross said.

Appaloosa argued that the \$614 million CWCapital calculated for itself from the sale of Stuy Town should instead count toward gain-on-sale proceeds and that the government-sponsored entities and CWCapital were not entitled to their cut, Judge Failla wrote. The profit from the sale of a defaulted property supersedes the waterfall payment order, they argued.

However, after a year of discovery, this argument falls short, Judge Failla wrote.

"[Appaloosa's] many arguments are belied by the record and, at times, undercut by Appaloosa's own positions in this litigation," Judge Failla wrote.

Among other things, Judge Failla said CWCapital's interpretation of its role and fee allocation was standard, pointing to how other special servicers in the industry also allocated their fees prior to distributing profits from the sale of defaulted properties.

"CWC's distribution is consistent with how other special servicers in the industry have allocated proceeds," Judge Failla wrote.

Judge Failla denied quick-win motions from the parties in March 2018, finding the interpretations of the contract too ambiguous to decide and sending the matter to discovery.

U.S. Bank National Association, the trustee for Stuy Town, first filed the current lawsuit in Minnesota state court in 2016 seeking an interpretation of how to allocate the funds. The case was then removed to federal court by Freddie Mac and transferred to New York in 2017.

In November 2015, before the sale, Appaloosa helped file a lawsuit in New York state court and sought an injunction preventing CWCapital from "unlawfully absconding" with proceeds from the sale. A judge denied the injunction later that month, and in December, Appaloosa withdrew the case.

Counsel for Appaloosa did not immediately respond to a request for comment.

Counsel for Fannie Mae and Freddie Mac declined to comment.

U.S. Bank NA was represented by a team including Kevin Biron, Bryan P. Goff, Collin F. Hessney, Michael S. Kraut and Jonathan H. Levy of Morgan Lewis & Bockius LLP.

Freddie Mac was represented by a team including in-house counsel Scott L. Walker, as well as Neil R. Lieberman, Michael S. Shuster and Eileen M. Delucia.

Fannie Mae was represented by a team including Christopher P. Johnson and Daniel I. Hendler of McKool Smith PC.

Appaloosa was represented by a team including Lawrence M. Rolnick, Michael J. Hampson, Thomas E. Redburn Jr., Maya Ginsburg, Nicole Castiglione and Sheila A. Sadighi of Lowenstein Sandler LLP.

CWCapital was represented by a team including Greg Cross, Colleen M. Casse, Adam G. Possidente,

Matthew T. Murnane and Moxila A. Upadhyaya of Venable LLP.

The case is In the Matter of the Trusts established under the Pooling and Servicing Agreements, case number 1:17-cv-01998 in U.S. District Court for the Southern District of New York.

--Editing by Nicole Bleier.

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