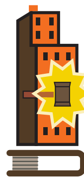
by Eric J. Fromme and Caroline R. Djang

Singled OUT

Chapter 11 provides only temporary respite to an entity in a single asset real estate bankruptcy



The U.S. Bankruptcy Code[1] was designed to handle the reorganization of operating businesses with a significant number of employees and multiple creditors. Its drafters did not envision the code as a means to resolve disputes between the owners of real property and their secured lenders. Yet during periods of declining real estate value, such as the past several years, property owners eager to delay or escape foreclosure seek shelter in chapter 11. Single asset real estate (SARE) debtors can look to Bankruptcy Code Sections 362(d)(3) and 101(51B) (the SARE provisions) to speed up their chapter 11 cases. At the same time, those sections prevent SARE debtors from using bankruptcy to wait out the market and stymie the enforcement efforts of lenders.

Even though the SARE provisions make bankruptcy a less attractive alternative for many property owners, most debtors are still finding that filing chapter 11 petitions yields more benefits than submitting to foreclosure. The goal of chapter 11 bankruptcy is to readjust the terms of the debtor's debt obligations so it can meet them given its current financial situation and projected income. This can be accomplished in SARE cases under the right circumstances. On the other hand, diligent secured lenders can limit the amount of delay they might face in exercising their right to foreclose.

Yet another factor comes into play, however, in the context of SARE cases. While the 2005 amendments to the Bankruptcy Code are better known for their requirements making it more difficult for consumer debtors to file, they also eliminated the $4 million debt cap.[2] With this change,

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the fast track rules for SARE cases began to apply to entities with properties that may be worth tens if not hundreds of millions of dollars. As a result, these rules are sweeping into their purview structured finance transactions in which the debt secured by the property is publicly tradeable, and the debt and the property are "ring-fenced" from the assets and liabilities of the borrowers' principals and affiliates—further binding repayment to the value of the property.

Consequently, strategic investors attempting to acquire attractive assets have used the SARE provisions in that pursuit. For example, the secured bondholders in *In the Matter of Scotia Pacific Company* attempted to have the debtor—an owner of hundreds of acres of forest—designated a SARE entity. This would have made it practically impossible for the debtor to restructure, because the debtor could neither make interest payments on $700 million nor propose a confirmable plan within 90 days. The attempt failed,[3] but other similar efforts are likely to ensue and may succeed.[4]

What Constitutes a SARE

For tax purposes, ownership of real estate is typically structured so that one entity only owns one piece of property. As the real estate market began to collapse, many single asset real estate entities not only became unable to meet their mortgage obligations but also sought Bankruptcy Code protection to prevent foreclosure by secured lenders. In a typical SARE case, as a result of the lack of an ongoing commercial enterprise and the fact that the loans were mostly nonrecourse, "the only means of loan repayment was the value of the real estate."[5] In California, however, it is typical for secured lenders to obtain a guarantee of the debt from the principals, parent, or affiliates of the borrower.

In response to the problems inherent in SARE cases, including the frustration of secured lenders,[6] Congress enacted the SARE provisions in 1994. These include Bankruptcy Code Section 101(51B), which defines "single asset real estate," and Section 363(d)(3), which imposes stringent deadlines on SARE debtors to either file a confirmable plan of reorganization or start making interest payments at the nondefault rate within 90 days of the filing of the bankruptcy or 30 days after the date the court designates the debtor a SARE, whichever is later.

Although the legislative history of Bankruptcy Code Section 363(d)(3) has been described as "meager,"[7] courts have recognized that it was designed to correct the "relative unfairness of lengthy delay" in SARE cases. Moreover, the section requires that "where the case does not early kick forward toward confirmation, a debtor must compensate its mortgagee for the time-value of the mortgagee's debt-investment, by the payment of interest at the original contractual rate."[8] However, motions for relief from stay are not automatically granted even when a debtor has failed to comply with the requirements of Section 363(d)(3).[9] Nevertheless, some courts have held that Section 363(d)(3) is self-executing and that a SARE debtor must act before the SARE deadlines run.[10]

For real property to be deemed a SARE, Bankruptcy Code Section 101(51B) designates three mandatory factors:

1) The property must be "real property constituting a single property or project."
2) The real property must generate "substantially all of the gross income of the debtor."
3) The debtor cannot maintain any "substantial business" on the property "other than the business of operating the real property."[11]

Bankruptcy courts consistently hold that Section 101(51B) is ambiguous and subject to different interpretations. As a result, practitioners must be mindful that a knowledge of case law prior to the enactment of the SARE provisions is essential to determining the scope of those provisions.[12] Indeed, post-1994 cases continue to analyze SARE cases in much the same way previous courts did before the passage of the SARE provisions.[13]

Under the SARE provisions, a "single project" may constitute more than one parcel of real property, but those parcels "must be linked together in some fashion in a common plan or scheme involving their use."[14] The connection must be more than tactile or operational. The essential requirement is the presence of a common purpose.[15]

Courts have noted that "[i]t is not clear what constitutes 'merely operating the real property' and what constitutes other business activity."[16] The phrase "generating substantially all of the gross income of the debtor" is similarly ambiguous as it tends to merge into the requirement that there be no substantial business on the property. Nonetheless, the touchstone of SARE jurisprudence remains intact: A debtor is not a SARE when its active use of property results in revenue attributable to the operations on the property and not the property itself. Thus, practitioners must clearly assess whether a debtor client's revenues are the product of the debtor's land or instead derived from the entrepreneurial efforts of its employees.[17]

The Fifth Circuit's *Scotia Pacific Company* ruling in 2007 reaches a conclusion apparently shared by all courts addressing the issue of what constitutes a SARE:

> In order to be single asset real estate, the revenues received by the owner must be passive in nature; the owner must not be conducting any active business, other than merely operating the real property and activities incidental thereto. Under the prior jurisprudence, those passive types of activities are the mere receipt of rent and truly incidental activities such as arranging for maintenance or perhaps some marketing activity, or…mowing the grass and waiting for the market to turn.[18]

Options for Debtors

Despite the fast track file-or-pay deadline, filing a chapter 11 case still provides a SARE debtor with considerable breathing space. A property owner's first step is to ensure that it does not meet the elements of a SARE. This can be done by: 1) commencing operations on the property (such as farming or retail operations), 2) contributing property to the entity and thus making it more than a single project (for example, transferring a parcel of property totally unrelated to the property the debtor currently owns), or 3) contributing personal property to the estate (such as stock, vehicles, or inventory).

Debtors that cannot put themselves beyond the reach of a SARE designation can seek a 90- to 120-day delay from foreclosure while they pursue their alternatives. The additional time may allow a SARE debtor to accomplish a sale of the property, raise additional capital, or obtain new financing.

A significant advantage of a bankruptcy is that the sale of the real property may be "cleaner" from the buyer's standpoint if it is accomplished with court approval as part of a bankruptcy case.[19] A potential buyer may be unwilling to buy a project from a financially troubled debtor not currently within the ambit of bankruptcy because of the prospect of potential claims, including the possibility that the sale may be set aside as a fraudulent or preferential transfer in the event of an ensuing bankruptcy.[20]

In a bankruptcy case, real property can be sold free and clear of liens, with the liens attaching to the sale proceeds.[21] If the sale is effected pursuant to a confirmed plan, impediments that would be fatal to a transfer outside of bankruptcy—such as due-on-sale mortgage provisions or even monetary or nonmonetary defaults—can be effectively eliminated by the plan.[22] Chapter 11 also offers an opportunity for the debtor to obtain new capital to fund its operations or to make improvements to its project.[23]

In preparation for a bankruptcy filing, a SARE debtor should conserve cash. The debtor can buy itself time beyond the 90-day deadline by making interest payments at the contract nondefault rate based on the value of the property. The cash preserved prior to filing may be the source of the inter-

est payments. If the debtor's property generates revenue, this may be used to make interest payments to the secured lender. However, many SARE debtors do not have property that generates revenue.

When interest payments are not feasible, the SARE debtor can achieve additional time by filing a confirmable plan. What constitutes a confirmable plan is less stringent than in other contexts. In a relief from stay proceeding, the SARE debtor need not demonstrate that its plan actually will be confirmed. The debtor also is not required to present the kind of evidence that would be necessary at a confirmation hearing. Instead, the debtor need only produce some evidence that its plan could be confirmed by a reasonable bankruptcy judge.[24]

The Bankruptcy Code permits a secured claim to be bifurcated. The secured portion of the claim is based on the value of the collateral. The other portion of the claim—the amount of the claim that exceeds the value of the collateral—constitutes the unsecured deficiency claim.[25]

Under Bankruptcy Code Section 1129(a)(10), if the plan proposes to impair one or more classes of creditors' claims, then the creditors behind at least one class of these impaired claims must consent to the plan for it to be confirmed. In a typical SARE case, the secured lender's deficiency claim is the largest claim and would dominate the voting if all unsecured claims were classified in a single class. If the lender does not agree on the terms of the plan, then an accepting class would have to come from other creditors. This is a significant challenge for debtors.

Recent Ninth Circuit cases, however, give SARE debtors an advantage with regard to classifying a secured creditor's deficiency claim separate from other unsecured claims. In the past, the separate classification of unsecured claims was considered improper when the court determined that its purpose was to "manipulate" plan voting: "Thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan."[26] However, in *In re LOOP 76, LLC*,[27] the court held that the debtor made a prima facie case that the significance of the guarantee of the secured creditor's debt by the debtor's principals rendered its claim both factually and legally dissimilar from the unsecured trade vendors' claims. The court reasoned that the secured creditor "need not be concerned about whether the plan maximizes the value of the estate and the return to creditors because it is assured of payment from nondebtor sources." Thus, the court held that the existence of guarantors was a permissible basis to find that the secured creditor's deficiency claim was dissimilar from other claims that lack an alternative repayment source.[28]

SARE debtors that can obtain consent from a class of creditors with impaired claims must still meet the confirmation requirements of Bankruptcy Code Section 1129. The plan cannot unfairly discriminate between the treatment of different classes of claims.[29] For example, a court found that the payment of a lender's unsecured deficiency claim without interest over 10 years was unfair discrimination, because other secured creditors were

paid within six months. As a result, the plan did not account for the time value of money and the risk of nonpayment.[30]

The plan also must be fair and equitable. To make this finding, Section 1129(b)(2)(A) specifies three attributes, any one of which defines a "fair and equitable" plan:

1) The plan allows the secured debtor to retain its liens up to the amount of its claim and provide for payments totaling the value of its claim.

2) The plan allows the secured creditor the right to credit bid for the property on sale.

3) The plan allows for the realization of the "indubitable equivalent" of its claim.

Typically, a SARE debtor proposes deferred payments. However, the sufficiency of the interest rate is often the subject of litigation and ultimately determined by the court.[31]

The SARE debtor's plan must be feasible.[32] Indeed, when a SARE debtor's plan provides for payment to creditors out of the income stream generated from ongoing operations, the SARE debtor must demonstrate that the plan is not likely to be followed by a liquidation or the need for further financial restructuring. Typically, SARE debtors satisfy the feasibility requirement by demonstrating the sufficiency of rental income or sales revenue to fund continued operations and payments to creditors under the plan.[33]

Procedures for Secured Creditors

Practitioners should not discourage SARE entities from taking advantage of the many benefits provided by chapter 11. Nevertheless, all parties should remember that the SARE provisions were enacted to benefit secured creditors. As one court ruled prior to the enactment of the provisions, "[A] debtor may not use the automatic stay indefinitely as a refuge while leaving the creditor to the risk of the market."[34] Congress intended that the SARE provisions would protect secured lenders from the unfairness of lengthy delays. Thus, when representing a secured lender, a practitioner's first step is to ensure that the debtor has checked the box for SARE designation when filing its petition. If the debtor

has not done so, counsel should move immediately for a court determination that the debtor is a SARE. An early determination is preferable. Otherwise, the debtor may secure an additional 30 days or more before being required to file a plan or commence interest payments.[35]

A SARE determination motion should request the court to enter an order determining that that the debtor is a SARE nunc pro tunc as of the petition date to preserve the 90-day deadline. At the same time, practitioners should note that Bankruptcy Code Section 362(d)(3) allows for an extension of the 90-day period to a later date "as the court may determine for cause by order entered within that 90-day period."

If the debtor fails to comply, a secured creditor should quickly file a motion for relief from the stay on as many grounds as possible. A court must terminate the stay if the debtor lacks equity in the property and the property is not necessary for an effective reorganization.[36] While a SARE designation does not necessitate a finding that the property is necessary for an effective reorganization,[37] the debtor must demonstrate how it intends to employ the Bankruptcy Code to effectuate a reorganization within a reasonable period of time.[38] Even if the debtor has filed a plan, the plan must have a "reasonable possibility of being confirmed within a reasonable time."[39] As one court recently noted about this process, "Courts usually require more than manifest unsubstantiated hopes for a successful reorganization."[40]

The lack of good faith in the filing of the bankruptcy may also constitute cause for relief from the stay.[41] Courts consider numerous factors in determining whether bad faith exists, including—but not limited to—whether:

• The debtor's one asset is subject to a foreclosure action.
• The filing is being used to frustrate the efforts of the secured creditor to enforce its rights.
• The debtor's cash flows are insufficient to meet debt service and other expenses.
• The case is essentially a two-party dispute between the debtor and the secured creditor.[42]
• Confirming a proposed plan appears to be impossible.[43]

The secured lender also should obtain an appraisal, if necessary, to prove that the property at issue is undersecured. If the debtor lacks equity in the property, the value of the property is declining, and the debtor's plan indicates only an ability to pay interest and not principal, a court may find that a successful reorganization is not a realistic prospect, which constitutes cause for lifting the stay.[44] A debtor's neglect and mismanagement of the property also support a finding that no reasonable possibility of reorganization exists.[45]

Secured lenders also can seek to thwart confirmation of a plan without their consent by purchasing or paying the claims of other creditors that are likely to accept the plan. However, this strategy is limited by Bankruptcy Code Section 1126(e), which provides that the court may disallow the vote of any creditor acting in bad faith in either voting or soliciting votes.[46]

Despite the fast-track deadlines of the SARE provisions, chapter 11 remains an option for real estate borrowers, because it can provide important additional months for the debtor to raise new capital, market and sell the property in bankruptcy to maximize the sale price, or—in rare instances—confirm a plan restructuring the debt. Whether a plan can be confirmed by a SARE debtor is directly correlated to the value of the property—the more valuable it is, the more likely a plan can be confirmed. If a borrower has been honest and a good manager and operator of the property, the bank will be more likely to negotiate even in chapter 11.

While the ability to raise new capital significantly increases the likelihood of confirming a consensual plan, nonconsensual plans nevertheless may be confirmed over the secured lender's objections. But even though the borrower can gain more time through a chapter 11 filing, that time is short. If the debtor cannot make interest payments or file a confirmable plan, it will likely only gain an additional four to six months to avoid foreclosure. ■

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[1] 11 U.S.C. §§101 *et seq.*

[2] In addition, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) provides that interest payments must be at the nondefault contract rate of interest as opposed to the "current fair market rate." 11 U.S.C. §362(d)(3).

[3] *See* In the Matter of Scotia Pac. Co., LLC, 508 F. 3d 214 (5th Cir. 2007).

[4] One commentator predicted that removal of the cap would allow mortgage holders to control the chapter 11 process to their benefit by seizing property for potential gain or leaving it in chapter 11 to serve their other purposes—at the expense of property owners, general unsecured creditors, and the public. Kenneth N. Klee, *One Size Fits Some: Single Asset Real Estate Bankruptcy Cases*, 87 CORNELL L. REV. 1285 (2002). A recent study shows that many SARE (and non-SARE) real estate cases in the past few years have ended with the secured creditor's obtaining relief from the automatic stay to foreclose. Faced with this prospect, some owners have simply decided to turn over distressed real property to the lender, often through a deed in lieu of foreclosure before bankruptcy. *See* Robert L. Eisenbach, Who's SARE Now? Bankruptcy's Single Asset Real Estate Rules and Their Impact on Commercial Real Estate, In the (Red) Business Bankruptcy Blog, *available from the archives at* http://bankruptcy.cooley.com (Feb. 17, 2010). Klee's prediction seems to have been correct, with some real property owners choosing not to file for bankruptcy.

[5] Erich J. Stegich, *The National Bankruptcy Review Commission: Proposals for Single Asset Real Estate*, 5 AM. BANKR. INST. L. REV. 530, 532-33 (1997) (citing C. Daniel Motsinger, *The Bankruptcy Reform Act of 1994: New Mines in the Minefield*, 38 RES GESTAE 16 (1994)).

[6] George W. Kuney, *Hijacking Chapter 11*, 21 EMORY BANKR. DEV. J. 19, 29 (2004).

[7] Alfred G. Adams, Jr. & Jason C. Kirkham, *The Real Estate Lender's Guide to Single Asset Bankruptcy Reorganizations*, 8 DEPAUL BUS. & COM. L.J. 1, 4 (Fall 2009) (citing In re Archway Apartments, Ltd., 206 B.R. 463, 465 (Bankr. M.D. Tenn. 1997)) [hereinafter Adams & Kirkham].

[8] *Id.* (citing In re Heather Apartments Ltd. P'ship., 366 B.R. 45, 49-50 (Bankr. D. Minn. 2007)).

[9] *Id.* (citing In re Windwood Heights, Inc., 385 B.R. 832, 841 (Bankr. N.D. W. Va. 2008) (The debtor's plan was "patently unconfirmable," but the court nonetheless gave the debtor 30 additional days to file a modified plan because of the secured creditor's "substantial equity cushion.")).

[10] In re Wilmington on Drexel, Case No. 10-20181 (Bankr. N.D. Ill., *dismissed*, Nov. 1, 2010). *See also* In re Northern Outer Banks Assocs. LLC, 2010 WL 4643721, at *3 (Bankr. E.D. N.C. Nov. 8, 2010); In re R. J. Dooley Realty Inc., 2010 WL 2076959, at *4 (Bankr. S.D. N.Y. May 21, 2010); Nationsbank NA v. LDN Corp. (In re LDN Corp.), 191 B.R. 320, 326-27 (Bankr. E.D. Va. 1996).

[11] *See* In the Matter of Scotia Pac. Co., LLC, 508 F. 3d 214, 221 (5th Cir. 2007).

[12] Field v. Mans, 516 U.S. 59, 69 (1995) (citing Community for Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989) (quoting NLRB v. Amax Coal Co., 453 U.S. 322, 329 (1981))); *see also* In re Oceanside Mission Assocs., 192 B.R. 232, 234 (Bankr. S.D. Cal. 1996); Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S. 1, 10 (2000).

[13] *See* In re Philmont Dev. Co., 181 B.R. 220, 223 (E.D. Pa. 1995); In re Kkemko, Inc., 181 B.R. 47, 51 (Bankr. S.D. Ohio 1995) ("Anyone who works in the area of bankruptcy knows that the [1994 amendment] did not introduce the phrase 'single asset real estate' into bankruptcy cognizance….The drafters and promulgators of §101(51B) were working in a bankruptcy context, and we have no doubt that their intention in using the phrase 'single asset real estate' grew out of the common usage of that term in bankruptcy.").

[14] In re McGreals, 201 B.R. 736, 742 (Bankr. E.D. Pa. 1996).

[15] *See* Philmont Dev. Co., 181 B.R. at 224 (holding that three pieces of the same subdivision held by three entities with common owners was a single project when the development was funded from the same loan and each of the entities operated similarly). *See also* In re Cambridge Woodbridge Apartments, LLC, 292 B.R. 832, 835 (Bankr. N.D. Ohio 2003); In re Tad's Real Estate Co. Inc., 1998 WL 34066143 (Bankr. S.D. Ga. Mar. 23, 1998) (holding that 64 real estate lots that were part of the same subdivision constituted a single project).

[16] *See* In re CBJ Dev., Inc., 202 B.R. 467, 470-71 (9th Cir. B.A.P. 1996); Oceanside Mission Assocs., 192 B.R. at 234.

[17] *See* In re Prairie Hills Golf & Ski Club, Inc., 255 B.R. 228, 229-30 (Bankr. D. Neb. 2000); In re Larry Goodwin Golf, Inc., 219 B.R. 391, 392-93 (Bankr. M.D. N.C. 1997); In re Majestic Motel Assocs., 131 B.R. 523, 526 (Bankr. D. Me. 1991) (holding that motel revenues are not rents "derived from the real property itself, but are generated in large part by the labor and incidental services which the hotel business necessarily furnishes to its guests"). *See also* Kkemko, 181 B.R. at 51; Philmont Dev. Co., 181 B.R. at 223; Oceanside Mission Assocs., 192 B.R. at 235-36; CBJ Dev., 202 B.R. at 472 (finding that hotel operations con-

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stitute a business and thus debtor-hotel operator was not a SARE); In re Whispering Pines Estate, Inc., 341 B.R. 134, 136 (Bankr. D. N.H. 2006).
[18] In the Matter of Scotia Pac. Co., LLC, 508 F. 3d 214, 221 (5th Cir. 2007). *See* Kkemko, 181 B.R. at 51; Philmont Dev. Co., 181 B.R. at 223 n.1 (noting that parent is not a SARE debtor because, among other things, rental income is not its "direct source of income…").
[19] Adams & Kirkham, *supra* note 7, at 10-11.
[20] *Id.*
[21] 11 U.S.C. §363(f).
[22] *Id.*
[23] *See id.*
[24] In re Bonner Mall P'ship, 2 F. 3d 899, 902 n.4 (9th Cir. 1993).
[25] 11 U.S.C. §506.
[26] In re Barakat, 99 F. 3d 1520, 1525 (9th Cir. 1996) (internal quotes and citations omitted); *see also* Matter of Greystone III Joint Venture, 995 F. 2d 1274, 1279 (5th Cir. 1991).
[27] In re LOOP 76, LLC, 442 B.R. 713 (Bankr. D. Ariz. 2010).
[28] *See also* In re Red Mountain Mach. Co., 448 B.R. 1, 13 (Bankr. D. Ariz. 2011). *Accord* In re Woodbrook Assocs., 19 F. 3d 312, 319 (7th Cir. 1994).
[29] 11 U.S.C. §1129(b)(1).
[30] In re Crosscreek Apartments, Ltd., 213 B.R. 521, 538 (Bankr. E.D. Tenn. 1997). *Compare* In re Rivers End Apartments, Ltd., 167 B.R. 470 (Bankr. S.D. Ohio 1994).
[31] Till v. SCS Credit Corp., 541 U.S. 465 (2004) (providing that the market rate should apply).
[32] 11 U.S.C. §1129(a)(11).
[33] Crosscreek Apartments, 213 B.R. at 539.
[34] In re 160 Bleecker Street Assocs., 156 B.R. 405, 413 (S.D. N.Y. 1993).
[35] Adams & Kirkham, *supra* note 7, at 4 (citing In re Kara Homes, Inc., 363 B.R. 399, 407 (Bankr. D. N.J. 2007)).
[36] 11 U.S.C. §362(d)(2); *see also* In re Sutton, 904 F. 2d 327 (1993).
[37] *See* In re One Times Square Assocs. Ltd. P'ship v. Banque Nationale de Paris, 165 B.R. 773, 775 (S.D. N.Y. 1994).
[38] United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Ass'n, 484 U.S. 365, 375-76 (1988).
[39] *See* In re 652 West 160th LLC, 330 B.R. 455 (Bankr. S.D. N.Y. 2005); In re Nattchase Assocs. Ltd. P'ship, 178 B.R. 409, 417 (Bankr. E.D. Va. 1994).
[40] In re NMP Concord II LLC, No. 10-43080, 2010 WL 3488249, at *3 (Bankr. N.D. Cal. Sept. 1, 2010). *See also* In re Sun Valley Newspapers Inc., 171 B.R. 71, 75 (9th Cir. B.A.P. 1994); In re Canal Place LP, 921 F. 2d 569 (5th Cir. 1991).
[41] 11 U.S.C. §362(d)(1).
[42] In re Little Creek Dev. Co., 779 F. 2d 1068 (5th Cir. 1986); In re 68 West Street LLC, 285 B.R. 838 (Bankr. S.D. N.Y. 2002); In re Laguna Assocs. Ltd. P'ship, 147 B.R. 709 (Bankr. E.D. Mich. 1992); In re Venice-Oxford Assocs. Ltd. P'ship, 236 B.R. 805 (Bankr. M.D. Fla. 1998).
[43] In re Moazma SYED, 238 B.R. 133, 141 (Bankr. N.D. Ill. 1999).
[44] *See* In re Cameron-811 Rusk LP, No. 10-31856-H3-11, 2010 WL 2735707, at *7 (Bankr. S.D. Tex. July 12, 2010).
[45] *See* In re Garsal Realty Inc., 98 B.R. 140, 153 (Bankr. N.D. N.Y. 1989); In re New Era Co., 125 B.R. 725, 729 (S.D. N.Y. 1991).
[46] In re 255 Park Plaza Assocs. Ltd. P'ship, 100 F. 3d 1214, 1219 (6th Cir. 1996) (holding that secured lender's purchase of claims at face value to vote the claims against the debtor's plan and in favor of the lender's own plan was not in bad faith as it was merely protecting its own self-interest).