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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
JUDGE LAURA S. TAYLOR, PRESIDING

IN THE MATTER OF)	NO. 08-13091-LT
)	
GORDY A. SPIRES)	ADV: 09-90133
)	
V.)	
)	
G8 CAPITAL FUND VII, LLC)	
AND MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS)	
_____)	

PLAINTIFF'S MOTION TO SET ASIDE SALE OF REAL PROPERTY;
RULE 60(B) CONSIDERATION ON MOTION FOR RELIEF FROM
STAY; POSTING OF BANK; DEFAULT REQUESTED

REPORTER'S TRANSCRIPT OF PROCEEDING
SAN DIEGO, CALIFORNIA
TUESDAY, JULY 14, 2009

BY: CONNIE MIHOS, CSR 7391
SAN DIEGO BANKRUPTCY REPORTERS
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APPEARANCES:

LAW OFFICE OF JOSEPH REGO

BY: JOSEPH J. REGO

8765 AERO DRIVE, SUITE 306

SAN DIEGO, CA 92123

(858) 598-6628

LAW OFFICE OF STEPHEN L. BURTON

BY: STEPHEN L. BURTON

15260 VENTURA BOULEVARD, SUITE 640

SHERMAN OAKS, CA 91403

(818) 501-5055

1 SAN DIEGO, CALIFORNIA, TUESDAY, JULY 14, 2009, 10:05 A.M.

2

3 THE CLERK: IN THE MATTER OF GORDY A. SPIRES VERSUS G8
4 CAPITAL FUND, PLAINTIFF'S MOTION TO SET ASIDE SALE OF REAL
5 PROPERTY; RULE 60(B) CONSIDERATION ON MOTION FOR RELIEF
6 FROM STAY; POSTING OF BANK; DEFAULT REQUESTED.

7 AND IN THE MATTER OF GORDY A. SPIRES, MOTION TO
8 SET ASIDE SALE OF REAL PROPERTY; RULE 60(B) CONSIDERATION
9 ON MOTION FOR RELIEF FROM STAY; POSTING OF BANK; DEFAULT
10 REQUESTED.

11 MAY WE HAVE APPEARANCES, PLEASE.

12 MR. REGO: YES.

13 GOOD MORNING, YOUR HONOR. JOSEPH REGO APPEARING
14 FOR MR. SPIRES, WHO IS PRESENT IN THE COURTROOM.

15 THE COURT: GOOD MORNING.

16 MR. BRITTON: GOOD MORNING, YOUR HONOR. DAVID BRITTON
17 APPEARING SPECIALLY ON BEHALF OF STEPHEN BURTON ON BEHALF
18 OF G8 CAPITAL.

19 ALSO PRESENT IS BRETT GILLILAND FROM G8
20 CAPITAL.

21 THE COURT: GOOD MORNING.

22 ALL RIGHT. I ISSUED MY TENTATIVE. DID YOU GET A
23 CHANCE TO READ IT, MR. REGO?

24 MR. REGO: YES, YOUR HONOR.

25 THE COURT: DO YOU WISH TO COMMENT?

1 MR. REGO: BRIEFLY, YOUR HONOR. I REVIEWED THE
2 TENTATIVE AND, PERHAPS NOT MUCH TO YOUR SURPRISE, I'M NOT
3 IN AGREEMENT WITH IT.

4 THE COURT: I AM NOT SURPRISED; THAT'S WHY I WANT YOU
5 TO COMMENT OR ARGUE.

6 MR. REGO: YOUR HONOR, MY ARGUMENT IS VERY SIMPLE AND
7 STRAIGHTFORWARD. THE IMPROPERLY RECORDED DEED TO G8 WAS
8 NOT CURED BY A SUBSEQUENT RE-RECORDING TO ITSELF. IT
9 SIMPLY DOES NOT MAKE ANY SENSE.

10 PERHAPS THIS WAS NOT ARGUED WITH THE SPECIFICITY
11 THAT IT SHOULD HAVE BEEN AT THE MOTION FOR RELIEF FROM
12 STAY. PERHAPS YES, PERHAPS NO.

13 THE COURT: LET ME STOP YOU BECAUSE I WANT YOU TO GO
14 BACK AND EXPLAIN TO ME, WHEN YOU SAY THE IMPROPERLY
15 RECORDED DEED TO G8, WHAT WAS THE IMPROPERLY -- BECAUSE, I
16 MEAN, I CAN ONLY LOOK AT THE DOCUMENTS, AND WHAT I SAW WAS
17 AN ASSIGNMENT OF DEED OF TRUST WITH A NOTE THAT WAS, I
18 THINK, DATED JULY 25TH AND RECORDED THE FOLLOWING AUGUST, A
19 WEEK OR TWO THEREAFTER.

20 MR. REGO: NO, YOUR HONOR. THE DEED I'M REFERRING TO
21 IS THE DEED THAT WAS RECORDED, IF I REMEMBER CORRECTLY,
22 10/27 OF '08. G8 HAD RECORDED THE PROPERTY TO ITSELF
23 BEFORE IT EVEN BEGAN FORECLOSURE PROCEEDINGS; THAT HAS BEEN
24 REALLY THE THRUST OF MY ARGUMENT FROM THE BEGINNING.

25 IF WE ACCEPT THE FACT -- AND PERHAPS IT WAS

1 ERROR, PERHAPS YES, PERHAPS NO; BUT IF THAT DEED WAS
2 RECORDED ON 10/27/08 IMPROPERLY TO G8, ALL SUBSEQUENT
3 ACTIONS ARE RENDERED VOID IN MY OPINION BECAUSE IT HAD NO
4 RIGHT TO RECORD THE PROPERTY TO ITSELF BEFORE IT BEGAN
5 FORECLOSURE PROCEEDINGS. WHAT HAPPENED HERE IS THEY
6 RECORDED THE PROPERTY TO THEMSELVES AND THEN PROCEEDED WITH
7 FORECLOSURE PROCEEDINGS.

8 SO MY ARGUMENT HAS BEEN, AND I'VE ARGUED THAT
9 FROM THE BEGINNING, THAT BECAUSE OF THAT IMPROPER
10 RECORDATION ALL SUBSEQUENT ACTIONS ARE VOID, INCLUDING THE
11 MOTION FOR RELIEF FROM STAY, BECAUSE G8 NEVER HAD A VALID
12 LAUNCHING PAD IN ORDER TO COMMENCE ITS FORECLOSURE
13 PROCEEDINGS. AND, QUITE SIMPLY PUT, THAT HAS BEEN OUR
14 ARGUMENT THROUGHOUT ALL OF THIS LITIGATION IN TERMS OF THE
15 MOTION, NOT IN TERMS OF THE ADVERSARIAL COMPLAINT; THAT
16 GOES INTO SOME DIFFERENT ISSUES.

17 THE COURT: RIGHT.

18 LET ME ASK YOU THIS. I'M LOOKING AT THE DOCUMENT
19 TIME LINE, AND WE'VE GOT THE OCTOBER 28TH -- SO WE'VE GOT A
20 NOTICE OF DEFAULT THAT'S PRIOR TO ALL THIS HAPPENING, THEN
21 WE HAVE THE ASSIGNMENT OF DEED OF TRUST RECORDED ON AUGUST
22 4, THEN WE HAVE ANOTHER RECORDED ASSIGNMENT OF DEED OF
23 TRUST WHICH APPEARS TO BE -- THAT APPEARS TO HAVE BEEN IN
24 ERROR, G.E. MONEY, WHATEVER, THEY'D ALREADY ASSIGNED IT TO
25 ANOTHER ENTITY; THEY COULDN'T ASSIGN AGAIN.

1 THEN WE HAVE THE PEPPERTREE FINANCIAL -- OR THEN
2 WE HAVE THE NOTICE OF SALE AND WE HAVE A RECORDED
3 SUBSTITUTION OF TRUSTEE. AND WE HAVE -- SO YOU'RE TALKING
4 ABOUT -- SO WE'VE GOT A SUBSTITUTION OF TRUSTEE, THEN,
5 WHICH IS G8 AT THAT POINT HAS RECEIVED AN ASSIGNMENT OF THE
6 TRUST DEED. SO THEY HAVE THE RIGHT TO SUBSTITUTE TRUSTEE.

7 SO I'M TRYING TO FIGURE OUT WHICH DOCUMENT -- YOU'RE
8 TALKING ABOUT, THEN, THIS QUITCLAIM DATED OCTOBER 20, 2008?

9 MR. REGO: RIGHT. THE ARGUMENT -- AND I ATTEMPTED
10 TO --

11 THE COURT: IT'S RECORDED ON THE 27TH?

12 MR. REGO: RIGHT. YES.

13 IN MY MOVING PAPERS, I ATTEMPTED TO EXPLAIN TO
14 THE COURT THE VARIOUS CONFUSIONS AS TO THE CHAIN OF TITLE;
15 BUT TAKING THE SIMPLEST, AND IT'S REFERRED TO ON PAGE 5,
16 PARAGRAPH 5, IT SAYS: AGAIN, THERE WAS A RECORDING OF
17 QUITCLAIM DEED FROM PROPERTY ASSET MANAGEMENT TO G8 CAPITAL
18 ON 10/27/08.

19 THE COURT: RIGHT.

20 MR. REGO: WHICH WAS IMPROPER ON ITS FACE BECAUSE G8
21 HAD NOT PERFECTED THEIR RIGHTS TO THE PROPERTY. THE
22 FORECLOSURE HAD NOT EVEN TAKEN PLACE.

23 THE COURT: BUT THIS WAS A QUITCLAIM OF WHATEVER
24 PROPERTY ASSET MANAGEMENT HAD, IF ANYTHING.

25 I DON'T THINK THIS WAS AN ELEGANT WAY TO HANDLE

1 IT; BUT, AS I UNDERSTAND IT, PROPERTY MANAGEMENT ASSET
2 SHOWED UP ON TITLE. AND A NOT UNCOMMON THING TO DO WHEN
3 YOU HAVE A TITLE COMPANY SAYING, "WE'VE GOT SOMEBODY ON
4 TITLE THAT SHOULDN'T BE THERE," IS YOU CLEAN IT OFF.

5 AND A QUITCLAIM DEED -- I DON'T KNOW ANY WAY THAT
6 THAT ENTITY -- SO THERE WASN'T A TRANSFER BY G8; THERE WAS
7 A TRANSFER TO G8. RIGHT?

8 I MEAN, DO WE HAVE ANY DEED WHERE G8 PURPORTED TO
9 TRANSFER AN INTEREST TO ITSELF?

10 MR. GILLILAND: NO. AT THE INITIAL --

11 THE COURT: WELL, HE'S TALKING.

12 MR. GILLILAND: SORRY.

13 THE COURT: YOUR COUNSEL WILL TALK FOR YOU. WE'RE NOT
14 TAKING TESTIMONY RIGHT NOW.

15 MR. GILLILAND: SORRY.

16 THE COURT: I'M TRYING TO UNDERSTAND BECAUSE, AGAIN, I
17 STEP BACK AND I'M -- I'VE SPENT SOME LONG YEARS WORKING
18 WITH TITLE COMPANIES, AND YOU GIVE THEM WHAT THEY NEED TO
19 GIVE YOU THE TITLE INSURANCE YOU HAVE AND YOU GO TO PEOPLE
20 WHO ARE ON TITLE AND SAY: DO YOU HAVE ANY INTEREST IN THIS
21 PROPERTY? AND THEY LOOK AT THEIR RECORDS AND GO: HUH, NO.
22 AND THEN YOU GET A DOCUMENT THAT SATISFIES THE TITLE
23 COMPANY THAT THEY DON'T HAVE AN INTEREST.

24 SO, AS I READ THIS, IT'S FOR VALUABLE
25 CONSIDERATION, WHICH WAS PROBABLY, "WE WON'T SUE YOU,"

1 PROPERTY ASSET MANAGEMENT, INC., RELEASES AND QUITCLAIMS TO
2 G8 CAPITAL. SO THEY'RE SAYING, "WHATEVER WE HAVE, YOU'VE
3 GOT."

4 AND AS I UNDERSTAND, WHAT THEY PROBABLY HAD -- I
5 DON'T THINK THEY EVER PURPORTED TO HAVE A FEE INTEREST IN
6 THE PROPERTY. IT LOOKS LIKE FROM YOUR TIME RECORD -- AND I
7 DON'T HAVE COPIES OF ALL OF THIS -- THAT WHAT THEY HAD WAS
8 A SUBSEQUENT ASSIGNMENT OF THE DEED OF TRUST.

9 SO YOU'VE GOT ORIGINATOR, THE BANK THAT MADE THE
10 LOAN OR THE ENTITY OR WHATEVER THEY WERE THAT MADE THE
11 LOAN, THEY ASSIGNED THE TRUST DEED TO G8. THEN, YOU KNOW,
12 "OH, WELL, LET'S ASSIGN IT TO SOMEBODY ELSE." SO THEY
13 ASSIGNED THE SAME DOCUMENT TO SOMEBODY ELSE. BUT THEY
14 CAN'T; G8 HAS IT.

15 G8 THEN GOES TO FORECLOSURE. IT'S TRYING TO GET
16 PROBABLY A TRUST DEED SALE GUARANTEE. THEY'RE TRYING TO
17 GET A DOCUMENT THAT'S GOING TO TELL THEM WHAT THEY NEED TO
18 DO TO GO TO SALE. THEY GET THAT DOCUMENT FROM THE TITLE
19 COMPANY AND, LO AND BEHOLD, THERE'S TWO ASSIGNMENTS OF THE
20 SAME DEED OF TRUST.

21 AND THE TITLE COMPANY SAYS: WE'RE NOT GOING TO
22 FORECLOSE ON YOUR BEHALF BECAUSE SOMEBODY ELSE PURPORTS TO
23 HAVE AN INTEREST IN THAT TRUST DEED. SO THEY WENT TO THAT
24 OTHER ENTITY AND SAID: ARE WE GOING TO HAVE TO SUE YOU, OR
25 WILL YOU JUST ACKNOWLEDGE HERE'S OUR RECORDED DOCUMENT, WE

1 GOT IT FIRST? AND THE OTHER ENTITY SAID YES.

2 I THINK WHAT THEY INTENDED TO DO AND INELEGANTLY
3 DID WAS TO CONVEY TO G8 WHATEVER INTEREST THEY HAD IN THE
4 TRUST DEED. AND, YES, THEY SET IT UP AS A QUITCLAIM, BUT
5 THAT'S WHAT -- TO ME, THE ONLY THING THAT MAKES LOGICAL
6 SENSE IS THAT.

7 AND I GET BACK TO THE POINT THAT THEY ACCEPTED
8 THIS QUITCLAIM INTEREST FROM SOMEBODY WHO NOBODY -- I'VE
9 SEEN NOTHING THAT INDICATES THAT ANYBODY COULD BELIEVE THAT
10 THAT ENTITY HAD ANY FEE INTEREST IN THE PROPERTY. THEY
11 DIDN'T, AND NEITHER DID THE ORIGINATING BANK. THE ONLY FEE
12 INTEREST WAS WITH THE DEBTOR, AND THE ONLY WAY TO GET THAT
13 FEE INTEREST FROM THE DEBTOR WAS FORECLOSURE.

14 SO THAT'S HOW I READ THIS.

15 MR. REGO: WELL, I DON'T DISAGREE WITH YOUR ANALYSIS,
16 YOUR HONOR. THE QUESTION, THOUGH, REMAINS IS: DID THEY
17 HAVE STANDING TO INITIATE THE FORECLOSURE PROCEEDING TO
18 BEGIN WITH? THAT'S BASICALLY MY SIMPLE ARGUMENT.

19 NOW, IF WE LOOK AT THE TIME LINE THAT I DEvised,
20 WE HAVE -- I GUESS, IF WE GO BACK TO OCTOBER OF '08, WE
21 HAVE THE DEED OF TRUST AND THERE WAS MERS INVOLVED. THE
22 ORIGINAL ONE I HAD LITTLE ARROWS POINTING, BUT IT APPEARS
23 AS THOUGH THERE WAS G.E. MONEY AND THEN PROPERTY ASSET
24 MANAGEMENT. THERE WAS NO ASSIGNMENT FROM G8 TO G.E. MONEY.

25 THEN WE GO TO 8/19. THERE WAS A SUBSTITUTION OF

1 TRUSTEE FROM PROPERTY ASSET MANAGEMENT TO N.D.E.X. WEST AND
2 THERE WAS NO ASSIGNMENT FROM G8 TO PROPERTY ASSET. SO THE
3 QUESTION IS: WHAT, THEN, WAS ASSIGNED FROM PROPERTY ASSET
4 MANAGEMENT TO N.D.E.X. WEST?

5 AND THEN WE'VE GOT THIS ASSIGNMENT FROM G8
6 CAPITAL TO PEPPERTREE FINANCIAL. THEN WE HAVE --

7 THE COURT: IT'S NOT AN ASSIGNMENT; IT'S A
8 SUBSTITUTION OF TRUSTEE.

9 MR. REGO: RIGHT, A SUBSTITUTION OF TRUSTEE WHICH WAS
10 RECORDED.

11 SO, AGAIN, AS TO THE NARROW, FOCUSED ISSUE THAT
12 WE HAVE BEFORE THE COURT BECAUSE, OF COURSE, WE HAVE THE
13 ADVERSARIAL COMPLAINT, WHAT WE'RE ARGUING ABOUT HERE IS
14 POSSESSION OF THE PROPERTY.

15 THE COURT: RIGHT.

16 MR. REGO: AND AS THIS COURT CAN SEE, THERE HAS BEEN
17 VOLUMINOUS UNDERLYING LITIGATION TO GET THEM OUT OF THE
18 PROPERTY. THERE WERE A COUPLE OR TWO OR THREE APPEARANCES
19 UP IN NORTH COUNTY ON THE UNLAWFUL DETAINER PROCEEDING,
20 WHICH I DOCUMENTED TO THIS COURT SO THAT THE COURT CAN GET
21 A TENOR OF REALLY HOW DIFFICULT THIS WHOLE TRANSACTION HAS
22 BEEN.

23 BUT THE POINT IS, IF IT WERE NOT CLEARLY
24 ADDRESSED TO THE COURT, THEN THIS IS MY OPPORTUNITY TO
25 ADDRESS IT VERY CLEARLY. AND THE QUESTION REMAINS: DID

1 THEY HAVE STANDING TO FORECLOSE ON THEIR NOTE WHEN THEY
2 DID?

3 IF THEY DID NOT, THEN THE MOTION FOR
4 RECONSIDERATION ON THE MOTION FOR RELIEF FROM STAY COMES
5 INTO PLAY. AND, OF COURSE, THEN THE FOLLOWING ARGUMENTS
6 COME INTO PLAY AS FAR AS THE DEBTORS REMAINING IN
7 POSSESSION AND, OF COURSE, POSTING A BOND.

8 BUT IF THIS COURT IS CONVINCED THAT, ALTHOUGH
9 CLOUDABLE, IF THERE IS SUCH A WORD, THAT THERE WAS
10 SUFFICIENT STANDING FOR THE LENDER TO FORECLOSE, THEN I
11 SUPPOSE I HAVE TO ACCEPT THIS COURT'S ANALYSIS AT THIS
12 JUNCTURE AND ARGUE OR CONTINUE TO TRIAL WITH THE ISSUE OF
13 DAMAGES.

14 THE COURT: RIGHT.

15 MR. REGO: I JUST WANT TO MAKE SURE THAT WE'RE ON --
16 BECAUSE MAYBE I DIDN'T MAKE IT CLEAR ENOUGH BUT, IF NOT,
17 I'M MAKING IT CLEAR THIS MORNING. I JUST WANT TO MAKE SURE
18 THAT WE'RE ON THE SAME PAGE AS TO THIS COURT'S INITIAL
19 RULING ON THE MOTION FOR RELIEF FROM STAY BECAUSE, IF YOUR
20 HONOR IS GOING TO UPHOLD THAT RULING, THEN WE HAVE NO
21 OPTION BUT THAT THE DEBTORS HAVE TO VACATE. THE
22 ADVERSARIAL COMPLAINT WILL GO TO TRIAL, BUT THE DEBTORS
23 HAVE TO VACATE.

24 THE COURT: LET ME WALK YOU THROUGH MY ANALYSIS
25 BECAUSE I THINK THAT WHAT'S HAPPENED HERE IS THE EVIDENCE I

1 HAVE -- I KEEP GOING BACK TO A FUNDAMENTAL PRINCIPLE OF
2 LIFE AND LAW, WHICH IS YOU CAN'T TRANSFER THAT WHICH YOU DO
3 NOT OWN.

4 AND THE TIME LINE TO ME APPEARS CRISP AND
5 CLEAR -- AND THIS IS WHAT I WANT YOU TO SPEAK TO, AND I
6 WANT MR. BRITTON TO CONFIRM IF I HAVE THIS WRONG -- THAT A
7 LOAN WAS ORIGINATED BY G.E. -- WHAT WAS IT, G.E. MONEY?
8 SOME G.E. ENTITY.

9 MR. REGO: I BELIEVE IT WAS G.E. MONEY, YOUR HONOR.

10 THE COURT: G.E. MONEY, WHATEVER THAT IS.

11 G.E. MONEY MADE A LOAN. THAT LOAN WAS -- THE
12 NOTE AND DEED OF TRUST WERE ASSIGNED.

13 YES, MERS WAS INVOLVED. IT WAS A MERS WAREHOUSED
14 OR A MERS HELD -- MERS HAD THE BENEFICIAL ENTRY UNDER THE
15 TRUST DEED, BUT I HAVE NO EVIDENCE IN FRONT OF ME AT THIS
16 TIME THAT THERE WERE ANY INTERMEDIATE TRANSACTIONS.

17 THIS WAS NOT A SECURITIZED TRANSACTION INVOLVING
18 A WAREHOUSED MORTGAGE OR DEED OF TRUST THAT MIGHT HAVE GONE
19 THROUGH OTHER HANDS BETWEEN G.E. MONEY AND G8. I HAVE A
20 PROPERLY EXECUTED AND RECORDED ASSIGNMENT AND, AGAIN, NOTE
21 AND DEED OF TRUST. THE DEED OF TRUST RECORDATION IS REALLY
22 IRRELEVANT; THE NOTE HAS TO FOLLOW. SO I HAVE THE NOTE.

23 SO, AT THAT POINT IN TIME, G.E. MONEY HAD
24 NOTHING. THEY HAD TRANSFERRED THE LOAN AND THE COLLATERAL
25 FOR THE LOAN. AND EVEN IF THEY HADN'T TRANSFERRED THE

1 COLLATERAL FOR THE LOAN, UNDER CALIFORNIA LAW, THAT
2 COLLATERAL FOLLOWS.

3 SUBSEQUENT TO THAT TRANSACTION, FOR REASONS THAT
4 PROBABLY SPEAK VOLUMES TO EXACTLY HOW -- I'M TRYING TO
5 THINK OF THE RIGHT VERB; I CAN'T THINK OF ONE -- BUT HOW
6 CONFUSED AND INAPPROPRIATELY CONFUSED THE MORTGAGE LENDING
7 INDUSTRY IS, G.E. MONEY TRANSFERRED THE SAME NOTE AND THE
8 SAME LOAN TO ANOTHER ENTITY OR PURPORTED TO DO SO AND THAT
9 ENTITY TOOK IT; AND THAT WOULD BE THIS PROPERTY ASSET
10 MANAGEMENT, INC. THERE WAS ANOTHER TRANSFER.

11 THE PROBLEM WAS, AT THAT POINT IN TIME, G.E.
12 DIDN'T OWN ANYTHING; THEY'D ALREADY TRANSFERRED IT. SO
13 WHILE THOSE DOCUMENTS EXIST AND THOSE DOCUMENTS WENT INTO
14 THE PUBLIC RECORD AND THOSE DOCUMENTS CREATE MISCHIEF EVEN
15 TO THIS DAY, IT'S A NULLITY. ANY COURT LOOKING AT THAT
16 WOULD HAVE TO CONCLUDE THAT IT HAD NO LEGAL EFFECT BECAUSE
17 THEY COULD NOT TRANSFER WHAT THEY DID NOT OWN.

18 THE ENTITY WHO TOOK THAT TRANSFER POTENTIALLY --
19 THEY DID IT UNAWARE THAT G8 EXISTED AND THAT G8 HAD ALREADY
20 RECEIVED THE TRANSFER, SUBSTITUTED IN A TRUSTEE, A FAIRLY
21 COMMON PRACTICE. THESE ENTITIES HAVE THEIR CAPTIVE
22 TRUSTEES AND EVERYBODY AT EACH CHAIN IN TITLE TENDS TO --
23 IT'S NOT THE OLD DAYS WHERE WE ALL USED THE SAME TITLE
24 COMPANIES. EVERYBODY'S GOT THEIR CAPTIVE TRUSTEE, AT LEAST
25 IN CALIFORNIA WHERE WE HAVE DEEDS OF TRUST.

1 SO THEY SUBSTITUTED TRUSTEE, AND THAT WAS THE
2 TRANSFER OR THE PURPORTED TRANSFER FROM PROPERTY ASSET
3 MANAGEMENT TO N.D.E.X WEST -- EXCUSE ME -- NOT TRANSFER BUT
4 SUBSTITUTION OF TRUSTEE. THAT SUBSTITUTION WAS A NULLITY
5 BECAUSE THE RIGHTS HAD BEEN TRANSFERRED. PROPERTY ASSET
6 MANAGEMENT PRESUMABLY WASN'T TRYING TO DO ANYTHING
7 NEFARIOUS BUT, UNBEKNOWNST TO IT, IT HAD NO RIGHT OR
8 INTEREST.

9 AND, AGAIN, WHAT APPEARS CLEAR IS THAT G8 -- AT
10 SOME POINT, SOMEBODY FIGURED THIS OUT. WE THEN HAVE THE
11 QUITCLAIM FROM PROPERTY ASSET MANAGEMENT WITHIN WHICH THEY
12 GO: WE GOT IT. WE DON'T HAVE ANYTHING. WHATEVER WE HAVE,
13 WE'RE GIVING UP. SO ANY INTEREST WE HAVE IN ANYTHING -- I
14 THINK, AGAIN, IT MORE PROPERLY SHOULD HAVE BEEN DONE AS A
15 QUITCLAIM OF AN INTEREST UNDER A PARTICULAR ASSIGNMENT, NOT
16 AN INTEREST IN THE PROPERTY, BECAUSE WE WERE ASSIGNING THE
17 TRUST DEED, NOT ASSIGNING A FEE INTEREST IN THE PROPERTY.
18 BUT, WHATEVER, THEY DIDN'T HAVE ANY FEE; THEY DIDN'T
19 TRANSFER THAT.

20 AND IT SATISFIED THE TITLE COMPANY, PRESUMABLY,
21 BECAUSE THIS WENT TO FORECLOSURE, THAT WHATEVER INTEREST
22 THEY PURPORTED TO HAVE IN TERMS OF ASSIGNMENT OF THE TRUST
23 DEED WAS EFFECTED BY THE QUITCLAIM.

24 AND AT THAT POINT IN TIME, G8 -- THE G8
25 SUBSTITUTION OF TRUSTEE PEPPERTREE WAS ENTIRELY APPROPRIATE

1 BECAUSE IT HAD AN ASSIGNMENT OF THE UNDERLYING NOTE AND
2 DEED AND THE RESULTING DEED OF TRUST. IT HAD THE RIGHT TO
3 SUBSTITUTE TRUSTEE. AND, AGAIN, THESE INTERVENING
4 TRANSACTIONS WERE NULLITIES.

5 SO I DON'T SEE THIS ONE IN TERMS OF STANDING AS
6 PARTICULARLY PROBLEMATIC. THE SECURITIZED TRANSACTIONS,
7 ESPECIALLY THOSE INVOLVING MERS, I'LL BE HONEST, MR. REGO,
8 NOBODY'S DONE IT RIGHT YET. THERE'S SOME ISSUES THERE AND
9 I HAVE YET TO HAVE ANYBODY COME IN THIS COURTROOM AND LAY
10 THEM OUT FOR ME THE WAY YOU PROPERLY WOULD DO IT IN TERMS
11 OF A WAREHOUSE TO NOTE AND DEED OF TRUST.

12 AND THE CHANCES THAT X.Y.Z. MORTGAGE COMPANY
13 ACTUALLY WAS THE ONE THAT ULTIMATELY DIRECTLY PUT IT INTO
14 THE TRUST, THE CHANCES ARE SLIM AND NONE, BUT I HAVE YET TO
15 HAVE ANYBODY COME TO ME WITH ANYTHING THAT EVEN REMOTELY
16 APPROACHES, A, A CORRECT ARTICULATION OF THAT ARGUMENT AND,
17 B, SHOWING ME THAT THEY CORRECTLY SOUGHT THE INFORMATION
18 NECESSARY TO PROVE THAT AND HAVE BEEN DENIED THE
19 OPPORTUNITY TO DO SO.

20 SO, FOR THIS ONE, BECAUSE IT WASN'T A SECURITIZED
21 TRANSACTION, BECAUSE I HAVE NO EVIDENCE THAT G8 -- THAT
22 G.E. MONEY HAD OTHERWISE TRANSFERRED IT, I HAVE A DIRECT
23 TRANSFER FROM A TO B AND A SUBSTITUTION OF TRUSTEE BY B.
24 AND I THINK THEY HAD STANDING. I DON'T FIND THIS ONE TO BE
25 PARTICULARLY PROBLEMATIC.

1 NOW, THE ISSUES ON THE TRUTH IN LENDING AND
2 RESPA, THE USUAL, THOSE ISSUES ARE ONES THAT ARE NOT BEFORE
3 ME. THEY'RE BEFORE ME IN THE ADVERSARY PROCEEDING. I'M
4 NOT SURE THAT THOSE ISSUES NECESSARILY -- I MEAN, IF
5 THERE'S A PROPERLY DONE RESCISSION THAT IN TERMS OF TIMING
6 WOULD HAVE APPROPRIATELY BEEN AN UNSECURED CLAIM IN THE
7 BANKRUPTCY CASE, AS OPPOSED TO A DIFFERENT TIMING THAT
8 WOULD SIMPLY RESULT IN THE USUAL STATE COURT -- OR THE
9 APPROPRIATE FEDERAL RESCISSION SITUATION IS ONE THAT, AT
10 THE END OF THE DAY, I'M NOT SURE IT GETS THE DEBTOR
11 POSSESSION OF THEIR HOME, ANYWAY, BECAUSE IT SEEMS TO ME
12 THAT, IN A RESCISSION SITUATION WITH A BANKRUPT ENTITY,
13 YOU'VE STILL GOT -- EVEN IF YOU CAN TREAT THE RESCISSION
14 CLAIM OF THE LENDER AS AN UNSECURED CLAIM IN THE
15 BANKRUPTCY, THEY'RE STILL ENTITLED TO THEIR PRO RATA SHARE.
16 AND THE MOST IT'S EVER GOING TO RESULT IN FOR THE DEBTOR
17 IS, I THINK, MAYBE A HOMESTEAD. MAYBE YOU PEEL OFF ONE
18 LAYER OF DEBT AND THEY GET SOME MONEY, BUT I THINK IT'S
19 ALWAYS GOING TO BE A MONEY DAMAGES SITUATION.

20 SO I THINK THAT, IN THIS PARTICULAR CIRCUMSTANCE,
21 THE QUESTION GOING FORWARD OF WHETHER THERE'S A MONEY CLAIM
22 IS THE APPROPRIATE WAY TO APPROACH THIS BECAUSE I THINK
23 EVEN IF -- EVEN IF YOU'RE SUCCESSFUL IN THOSE CAUSES OF
24 ACTION AND EVEN IF YOUR RESCISSION CLAIM DOESN'T HAVE TO BE
25 FULLY FUNDED PRIOR TO SUCCESSFULLY CALLING FOR RESCISSION,

1 I DON'T SEE ANY WAY THE DEBTOR GETS TO COMPLETE AND KEEP
2 THE EQUITY IN THE PROPERTY.

3 AT A MINIMUM, THE CREDITOR'S GOING TO BE ENTITLED
4 TO THEIR PRO RATA SHARE OF THE EQUITY AS AN UNSECURED
5 CREDITOR. AND I DON'T THINK YOU'RE GOING TO HAVE
6 CREDITORS -- LENDERS MAY BE WILLING TO WORK WITH YOU WITH A
7 REALLY GOOD RESPA OR TRUTH-IN-LENDING CLAIM IN ORDER NOT TO
8 LOSE THAT EQUITY PIECE AND NOT TO BE PRO RATA, PARTICULARY
9 WITHIN A BIG GROUP OF UNSECURED CREDITORS; BUT IN SO MANY
10 OF THESE CASES, AND I HAVEN'T GONE AND LOOKED AT THE
11 SCHEDULES, THAT'S ALL THERE IS. SO YOU'RE NOT DILUTED
12 MUCH BY -- YOU LOSE THE HOMESTEAD AND YOU'RE DILUTED BY
13 OTHER UNSECURED CREDITORS' CLAIMS, BUT THEY'RE NOT THAT
14 SIGNIFICANT.

15 SO I'M GOING TO DENY THE MOTION. I UNDERSTAND
16 WHERE YOU'RE COMING FROM, AND I WELL APPRECIATE HOW
17 CONFUSING THIS RECORD IS. I HAVE TO SAY AGAIN -- I'VE SAID
18 IT TWELVE TIMES; I'LL SAY IT ONE MORE TIME -- I DON'T THINK
19 THE SOLUTION OF THE QUITCLAIM WAS THE ELEGANT ONE, AND I
20 HAVE A FEELING THAT G8 WILL THINK BETTER NEXT TIME IT'S PUT
21 IN THE UNFORTUNATE SITUATION OF HAVING TO CLEAN UP A RECORD
22 OF HAVING A BETTER EXPLANATION IN THERE FOR WHAT THEY'RE
23 DOING.

24 I CAN'T FIND ANYTHING IN THIS RECORD THAT STRIKES
25 ME AS NEFARIOUS OR INDICATES TO ME THAT G8 ISN'T IN SOME

1 WAYS A VICTIM, AS WELL. THEY MAY WELL HAVE CLAIMS AT SOME
2 POINT AGAINST G.E. MONEY BECAUSE IT APPEARS TO BE THE
3 SECOND TRANSFER OF AN INTEREST IN A NOTE AND DEED OF TRUST
4 ALREADY PROPERLY TRANSFERRED TO THEM THAT HAS CONFUSED THE
5 RECORD AND HAS CAUSED THEM TO INCUR ATTORNEYS FEES; BUT,
6 OTHERWISE, IT SEEMS A FAIRLY STRAIGHTFORWARD FROM THEIR
7 PERSPECTIVE TRANSACTION TO ME. SO I'M NOT INCLINED TO
8 CHANGE MY RULING.

9 MR. REGO: I UNDERSTAND THE COURT'S ANALYSIS, YOUR
10 HONOR, AND I APPRECIATE IT.

11 JUST TWO REQUESTS: ONE, WOULD IT DIFFER THIS
12 COURT'S OPINION IF G.E. MONEY AND G8 WERE ACTUALLY THE SAME
13 ENTITY?

14 THE COURT: WELL, IF THEY'RE EXACTLY THE SAME
15 ENTITY -- I MEAN, I HAD SOME QUESTIONS IN MY OWN MIND AS TO
16 WHO THEY ARE.

17 MR. REGO: UH-HUH.

18 THE COURT: IF IT IS IN FACT AND INDEED -- IF G.E.
19 MONEY AND G8 -- ONE'S AN LP AND ONE'S AN LLC, SO I'M NOT
20 SURE THEY COULD BE; BUT, IF THEY WERE, SURE, BECAUSE AT
21 THAT POINT THAT INTERMEDIATE TRANSFER WOULD BE A TRANSFER
22 TO A THIRD PARTY AND THAT ONE WOULD BE GOOD. YOU HAVE THE
23 QUITCLAIM BACK. SO I'D BE ASKING QUESTIONS ABOUT WHAT
24 EXACTLY WAS GOING ON AT THAT PARTICULAR POINT IN TIME.

25 AND TO THE EXTENT THEY'RE RELATED ENTITIES, THAT

1 MAY EXPLAIN SOME OF THE QUICK AND DIRTY NATURE OF THE
2 TRANSACTIONS; BUT, STILL, IF WE'RE LOOKING AT THAT SECOND
3 SET OF TRANSFERS, ONCE TRANSFER FROM ENTITY A TO ENTITY B
4 OCCURS, NOTWITHSTANDING THE RELATIONSHIP BETWEEN A AND B,
5 IF THEY ARE IN FACT AND INDEED SEPARATE ENTITIES, THEN A
6 DOESN'T HAVE ANYTHING LEFT TO TRANSFER AND ANYTHING IT DOES
7 AT THAT POINT IN TIME CREATES A CLOUD ON TITLE AND IT'S A
8 CLOUDABLE ACT OR A CLOUDING ACT AND IT'S IMPROPER. THEY
9 PURPORTED TO TRANSFER WHAT THEY DO NOT OWN, AND YOU CANNOT
10 TRANSFER AN INTEREST THAT YOU DON'T OWN.

11 CERTAINLY, SOMEONE CAN RELY ON THAT TO THEIR
12 DETRIMENT; BUT, ESPECIALLY IN THE REAL PROPERTY WORLD, ONCE
13 THAT ASSIGNMENT WAS RECORDED EVEN THIS OTHER ENTITY, THIS
14 PROPERTY ASSET MANAGEMENT, SHOULD HAVE BEEN ON NOTICE.

15 MR. REGO: THANK YOU, YOUR HONOR.

16 ALSO, TOO, ONE OTHER REQUEST, YOUR HONOR. MY
17 CLIENTS ARE IN THE PROCESS OF PACKING UP. THEY WOULD
18 REQUEST -- AND THEY'LL PAY REASONABLE RENT, BUT THEY WOULD
19 REQUEST ANOTHER TEN DAYS IF THE COURT IS SO INCLINED. THEY
20 HAVE PUT APPLICATIONS IN AND THEY'RE GOING TO LEAVE, BUT
21 THEY DO NEED SOME TIME.

22 THE COURT: WHAT'S THE STATUS, MR. BRITTON, OF THE
23 COURT ORDER FROM THE STATE COURT?

24 MR. BRITTON: YOUR HONOR, THIS --

25 THE COURT: I MEAN, I CAN'T DO ANYTHING WITH THE

1 STATE COURT ORDER.

2 MR. BRITTON: THIS ACTION'S BEEN PENDING. THEY
3 AGREED, APPARENTLY, IN THE STATE COURT TO BE OUT. THEY GOT
4 A CONTINUANCE FROM THE STATE COURT BASED UPON THIS HEARING.

5 SO, YOU KNOW, THIS HAS JUST BEEN GOING ON AND ON
6 AND ON AND ON. SO WE WOULD OBJECT TO ANY ADDITIONAL
7 TIME.

8 THE COURT: WELL, I DON'T THINK I HAVE JURISDICTION TO
9 DO THAT. IF THERE'S A STATE COURT ORDER, I DON'T HAVE
10 JURISDICTION. THE PROPERTY'S BEEN FORECLOSED, SO IT'S NO
11 LONGER AN ASSET OF THE ESTATE. SO THAT WOULD, IN EFFECT,
12 BE AN INJUNCTION AND YOU DON'T WANT TO BRING THAT ACTION.

13 WHAT I WOULD OFFER HERE IS THAT, MR. BRITTON, IF
14 THEY'RE WILLING TO PAY RENT, THE FOUR OF YOU ARE HERE AND I
15 SUGGEST YOU TALK BECAUSE I THINK, AT THAT POINT IN TIME, IF
16 THEY NEED TIME TO GET OUT, THE QUICKEST WAY TO GET YOUR
17 NAME IN THE PAPER IS TO SAY: NO, WE'RE TAKING YOUR HOME.
18 WE WON'T TAKE YOUR RENT FOR TEN DAYS. SO I WOULD STRONGLY
19 SUGGEST THAT A BUSINESS RESOLUTION BE REACHED.

20 MR. REGO: YOUR HONOR, THE LENDER AT THEIR REQUEST DID
21 A WALK-THROUGH OF THE PROPERTY. SO THEY'VE BEEN ABLE TO
22 SEE THE PROPERTY, SO THEY'VE BEEN ALLEVIATED OF ANY CONCERN
23 THAT THE PROPERTY IS GOING TO BE SEVERELY DAMAGED.

24 SO, YOU KNOW, I JUST THINK IT'S REASONABLE. I'M
25 SURE THAT, IF WE GO BACK TO THE STATE COURT, THAT THE

1 COMMISSIONER WOULD PROBABLY GIVE US THE ADDITIONAL TIME;
2 BUT SINCE WE'RE HERE THIS MORNING AND TO ALLEVIATE YET THE
3 NEED FOR ANOTHER EX PARTE APPEARANCE, THAT'S WHY I'M MAKING
4 THE REQUEST.

5 THE COURT: WELL, AND, AGAIN, I THINK IT'S MORE A
6 QUESTION OF JURISDICTION. HAVING DETERMINED THAT I'M NOT
7 GOING TO STEP AWAY FROM MY PREVIOUS ORDER, STAY OF RELIEF'S
8 BEEN GRANTED, AND THAT WOULD BE A REIMPOSITION OF THE
9 STAY.

10 MR. REGO: THAT'S TRUE.

11 THE COURT: I DON'T THINK I HAVE THE POWER TO DO
12 THAT.

13 I AGREE WITH YOU THAT IT'S A REASONABLE REQUEST
14 PROVIDED THAT MARKET RENT IS PAID AND PROVIDED THAT, AS I
15 BELIEVE TO BE THE CASE, NO DAMAGE TO THE PROPERTY WOULD
16 OCCUR. THIS IS JUST ALLOWING PEOPLE TO WITH DIGNITY LEAVE
17 THEIR HOME, AND I WOULD STRONGLY URGE THE LENDER TO ALLOW
18 THAT TO HAPPEN.

19 AND YOU CAN QUOTE ME TO THE COMMISSIONER IF YOU
20 GO IN FRONT OF HIM OR HER.

21 MR. REGO: THANK YOU, YOUR HONOR.

22 MR. BRITTON: YOUR HONOR, WE WILL DISCUSS THAT AFTER
23 THIS.

24 JUST TO CLARIFY THE RECORD, MR. GILLILAND
25 INDICATED TO ME THAT THERE IS NO RELATIONSHIP BETWEEN G.E.

1 AND G8 CAPITAL. G.E. WAS APPARENTLY OWNED BY LEHMAN
2 BROTHERS, AND G8 IS A VENTURE CAPITAL FIRM. NO
3 RELATIONSHIP WHATSOEVER.

4 THE COURT: ALL RIGHT. WELL, IT WAS AN INTERESTING
5 QUESTION. AND THE "G'S" DID IT. IT'S ALWAYS POSSIBLE WHEN
6 YOU HAVE -- IN THIS WORLD OF INITIALS, I DO WONDER. SO
7 THANK YOU FOR CLARIFYING THAT.

8 MR. BRITTON: AS A COMMENT, "G" FOR GREED.

9 THE COURT: WELL, THAT COULD BE.

10 MR. BRITTON: NO DISPARAGING THE PARTIES.

11 THE COURT: NO OFFENSE TO ANYONE. TO YOUR CLIENT,
12 NO.

13 ALL RIGHT. SO, MR. BRITTON, YOU MAY SUBMIT THE
14 ORDER SINCE IT'S IN YOUR FAVOR, AND WE WILL TAKE THAT
15 EXPENSE AND BURDEN OFF MR. REGO.

16 MR. REGO, THANK YOU FOR YOUR REQUEST. WELL
17 ARGUED, BUT I CAN'T AGREE WITH YOUR FACTUAL ASSUMPTIONS.

18 MR. REGO: THANK YOU FOR THE COURT'S TIME, YOUR HONOR.

19 THE COURT: THANK YOU.

20 (WHEREUPON, THE PROCEEDINGS ADJOURNED.)
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25

1 STATE OF CALIFORNIA)
2 :
3 COUNTY OF SAN DIEGO)

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I, CONNIE MIHOS, HEREBY CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS HELD
IN THE FOREGOING CAUSE ON THE 14TH DAY OF JULY, 2009; THAT
MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING UNDER MY
DIRECTION AND THAT THE FOREGOING TRANSCRIPT CONTAINS A
CORRECT STATEMENT OF THE PROCEEDINGS.

DATED THIS 6TH DAY OF OCTOBER, 2009.

/S/

CONNIE MIHOS
CSR NO. 7391

Redact
Rev. 03/09

United States Bankruptcy Court
Southern District of California
Jacob Weinberger U.S. Courthouse
325 West F Street
San Diego, CA 92101-6991

Telephone: 619-557-5620
Website: www.casb.uscourts.gov
Hours: 9:00am-4:00pm Monday-Friday

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Gordy A. Spires Debtor(s)	BANKRUPTCY NO. 08-13091-LT13
Gordy A. Spires Plaintiff(s)	ADVERSARY NO. 09-90133-LT
v. G8 CAPITAL FUND VII, LLC Defendant(s)	

NOTICE OF FILING OF TRANSCRIPT AND DEADLINES

TO PARTIES IN INTEREST

YOU ARE HEREBY NOTIFIED that a transcript of the hearing held **7/14/09** was filed with the Court on 10/6/09.

Access to this transcript is restricted for ninety calendar days from the date of filing unless extended by court order. All parties have seven calendar days to file a Notice of Intent to Request Redaction of certain identifying information as provided in the Judicial Conference's Privacy Policy. The four identifying items are: Social Security numbers (should be redacted to show only the last four digits); birth dates (should contain only the year of birth); individuals known to be minors (should be referred to with initials); and financial account numbers (should be redacted to the last four digits).

If a Notice of Intent to Request Redaction is filed, the party then has 21 calendar days from the date of filing of the transcript to file with the court and the court reporter, a Notice of Redaction with List of Location Identifiers.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber Nancy Wingis, (858) 775-0283, or you may view the document at the clerk's office public terminal at no cost.

Dated: 10/6/09

Barry K. Lander
Clerk of the Bankruptcy Court