

## NJ Plaza Owner Filed Ch. 11 To Dodge \$9M Debt, Lender Says

By Jeannie O'Sullivan

Law360 (September 10, 2021, 6:45 PM EDT) -- A New Jersey strip mall operator was accused Friday of using bankruptcy court to dodge a \$9 million foreclosure judgment following a three-year legal fight over the property's mortgage.

Evergreen Plaza's owner filed a Chapter 11 petition Thursday in New Jersey Bankruptcy Court just half an hour before a foreclosure auction was about to commence on the Burlington County property, according to a motion filed by lender 710 Route 38 ABL I Holdings LLC. ABL wants the court to dismiss the cases or, alternatively grant it relief from the automatic stay triggered by the petitions.

The petition filed on behalf of Evergreen Plaza Associates LLC and related entities, which cites between \$1 and \$10 million each of assets and liabilities, is the "latest in a series of failed attempts by the debtors to hinder lender's rights through frivolous and dilatory litigation," according to ABL.

The motion detailed a court battle that began when Evergreen Plaza Associates allegedly defaulted on a \$6.5 million mortgage, leading to the foreclosure action and a civil lawsuit by the lender seeking to recoup the loan.

"The debtors' filing of the chapter 11 petitions for the purpose of triggering an automatic stay is nothing more than a naked attempt to misuse the bankruptcy process and cause further delay to lender," according to a court filing by ABL, which is the assignee of Pender Capital Asset Based Lending Fund I LP, the original lender of the loan at issue.

In a letter filed alongside its bankruptcy petition, Evergreen Plaza Associates acknowledged that the petition was filed on an emergent basis to stay the foreclosure.

"The debtor has developed a strategy or plan for moving forward in the Chapter 11 Cases, which we submit will benefit all creditors, and which would like to discuss with the Court, the United States Trustee, Pender Capital and others that may desire to hear what we expect to occur in these cases," read a letter to the court by Evergreen Plaza Associates' attorney, Joseph L. Schwartz of Riker Danzig Scherer Hyland & Perretti LLP.

In a counterclaim filed in the civil lawsuit, Evergreen Plaza Associates has denied that the mortgage is in default and accused ABL of breach of contract, tortious interference and unjust enrichment.

Evergreen Plaza is a 90,000-square-foot strip mall that's home to a Dollar Tree, a furniture store, a hardware store, a nail salon and restaurants, according to the motion. The property straddles the municipalities of Lumberton and Mount Holly.

The loan at issue was executed in March 2018 for a principal amount of \$6.5 million at 12% interest, due in full by April 2019, according to the motion. The loan fell into default in December 2018, the motion said.

Pender sent default notices to Evergreen Plaza Associates in December 2018 and January 2019, accelerating the debt and demanding the rent, according to the motion. Also in January 2019, Pender directed the strip mall's tenants to send rent payment to Pender, the motion said.

Pender commenced foreclosure proceedings the following month, and in May 2019 filed a civil lawsuit

that's still pending, the motion said.

Meanwhile, the property began to fall into a state of disrepair and a receiver was appointed, ABL claimed.

The receiver then accused Evergreen Plaza Associates and its principal, Nicholas Aynilian, of misconduct, such as refusing to turn over rents they mistakenly received from the tenants and incurring a municipal citation for failing to upkeep the property, the motion said. The receiver order was amended to enjoin Evergreen Associates and Aynilian from "operating or even entering" the strip mall property, according to the motion.

Evergreen Plaza Associates unsuccessfully sought to have the receiver removed and also filed multiple adjournments in the foreclosure proceeding, ABL claimed. A final judgment of foreclosure was awarded in favor of the lender in November 2020 in the amount of \$8.5 million plus attorney fees and interest.

The foreclosure sale was initially delayed due to the COVID-19 but ultimately scheduled to occur in June, the motion said.

The date was pushed back to Sept. 9 following adjournment requests by Evergreen Associates, which filed its Chapter 11 petition "less than one hour before the scheduled sale was to occur," according to ABL.

ABL, which was assigned the debt last month, claims it's owed \$9,020,761.09 under the foreclosure judgment.

In Pender's civil lawsuit over the mortgage, the counterclaims by Evergreen Plaza Associates allege that the New Jersey property was cross-collateralized with property in Pennsylvania.

Evergreen Plaza Associates claimed that Pender agreed to have "certain borrowed funds" deposited into a post-closing escrow account to repay a loan that had become a lien on the properties. However, Pender "continues to refuse to comply with said agreement," the counterclaim said.

Counsel for the parties didn't immediately respond to requests for comment.

ABL is represented by Michael J. Barrie and Kevin M. Capuzzi of Benesch Friedlander Coplan & Aronoff LLP.

Evergreen Plaza Associates is represented by Joseph L. Schwartz of Riker Danzig Scherer Hyland & Perretti LLP.

The cases are In re: Evergreen I Associates LLC, case number 21-17116; In re: Evergreen II Associates LLC, case number 21-17118; In re: Evergreen III Associates LLC, case number 21-17119; and In re: Evergreen Plaza Associates LLC, case number 21-17120, in New Jersey Bankruptcy Court.

--Editing by Andrew Cohen.