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Cullen and Dykman Successfully Completes Bulk UCC Foreclosure Auction of 89 Manhattan Coop Units and Defeats TRO Application

July 11, 2011

On behalf of a major regional commercial and multifamily lender, Cullen and Dykman successfully completed a UCC foreclosure auction on July 21, 2011, at which the shares and proprietary leases for 89 Manhattan residential cooperative apartments (60 units at 200 East 27th Street and 29 units at 201 East 25th Street) were auctioned to the highest bidder. A bulk auction of this nature occurs infrequently and this one presented an unusual opportunity to the sophisticated Manhattan real estate world. This rare event allowed an investor to purchase a large block of Manhattan apartments in a single transaction and investor interest in the weeks leading up to the auction was intense. Cullen and Dykman advertised the sale in the Wall Street Journal, Investor's Business Daily and the New York Post. On the actual sale date, approximately forty bidders attended the sale which yielded spirited and suspenseful bidding with an ultimate sale price in excess of the lender's upset price. The result? First, a lender that was more than pleased with the proceeds of sale. Second, a successful bidder/investor that landed this potentially very profitable opportunity.

In the weeks leading up to the sale, Cullen and Dykman, together with the secured lender, crafted a successful advertising and marketing campaign which ultimately generated the intense interest evident at the sale. Cullen and Dykman worked closely with the lender in reviewing strategy, possible scenarios and potential values. Most of the units were occupied and, therefore, potentially subject to rent regulation or rent control, factors which had to be taken into account in preparing strategy and drafting the terms of sale. Based on this review, the lender carefully calculated an upset price and was extremely pleased when that upset price was exceeded. The sale was the result of a secured loan wherein the co-op units were pledged as collateral. Operating within the restrictions of the loan documentation and requirements of New York law, the lender and the firm moved forward with the sale, coordinating diverse elements, including the auctioneer and the two cooperative corporations.

The firm also successfully rebuffed a last minute attempt by the borrower to stay the sale via a TRO. On the day prior to the sale, the borrower presented a TRO in New York State Supreme Court requesting a stay of the auction. Cullen and Dykman appeared in opposition and the TRO was denied. Cullen and Dykman asserted a three-pronged argument in support of the lender's opposition to the TRO: the auction was within the ambit of the loan documents, the auction adhered to all statutory requirements and the circumstances of the auction were commercially reasonable.

Cullen and Dykman is proud to have been a part of this unique occurrence and to have achieved a successful result for the lender.

Practices

Industries

- Business Reorganization and Financial Restructuring

Attorneys

- John T. Curran