

Score One for the Good Guys!

Bucktown's Victory against Big Bank PNC Spells Good News for Bucktown Residents and the Community as a Whole

Award winning Chicago developer Bruce Fogelson and his company, Bucktown Station LLC, have successfully defended against a move by PNC National Association, one of the nation's largest banks, to scuttle a plan for the orderly and responsible reorganization of Bucktown Station LLC under Chapter 11 of the U.S. Bankruptcy Code. Bucktown LLC's owns and operates Bucktown Station, the mixed residential and commercial property at the intersection of Winnebago and Western Avenue in Chicago. Fogelson and his team fended off PNC's repeated attacks and in a recent ruling by a bankruptcy judge in Chicago won the go-ahead to pursue a proposed reorganization of the company aimed at helping to protect residents of the Bucktown Station Property and the community at large. Full text of the ruling can be found [here](#). This ruling represents a victory, not only for Bucktown, but also potentially for other businesses seeking Chapter 11 protection.

The trouble started in 2007 when, as a result of the downturn in the housing market, Bucktown Station came under increased financial pressure. PNC Bank, originally one of the major creditors for the project, refused to restructure Bucktown's debt thus forcing the company to pursue Chapter 11 reorganization protection. From the start of the proceedings, PNC and their lawyers utilized various legal maneuvers to try to break through the bankruptcy protection and force the sale of the property. These maneuvers culminated in the filing of a motion to "Modify Automatic Stay." PNC's move was significant because when a business files for Chapter 11 protection, a court will prevent (or "stay") proceedings by creditors attempting to get at the businesses' assets. A "Motion to Modify Stay" thus attempts to get at these assets by arguing that some assets, in this case the Bucktown Station property, are not entitled to Chapter 11 protection.

As part of its attack, PNC attempted to argue that since Bucktown LLC no longer had any equity in the property, the property could not be considered a necessary part of any reorganization plan. In essence, PNC's argument was that properties where owners don't hold any equity, their not entitled to Chapter 11 protections. Fogelson and his team countered that the property was in fact fully occupied and that the income from the rental and lease payments combined with the future sale of several of the occupied units would be in integral part of funding the company's reorganization in a manner that minimizes disruptions for residents and the community.

In winning this argument, Fogelson and his team have scored a significant victory not only for Bucktown residents, but more generally for other businesses seeking Chapter 11 protection. Big banks and other creditors have in the past been able to convince Bankruptcy courts that where a property owner has no equity in the property, the property cannot be a necessary part of a restructuring and thus the property is not entitled to protection. This argument

says in essence that a business finding itself without equity, with respect to some property or another, can basically say goodbye to a property in any Chapter 11 reorganization. With the victory at Bucktown, businesses seeking Chapter 11 protections now have some support and guidance with respect to showing them how to protect their assets even if they are underwater. Specifically, the business must show that it has a credible plan for coming out of the reorganization and that the property in question is an integral part of that reorganization. In Bucktown's case, Fogelson and his team were able to show the unsold units in the property would be sold for a substantial profit over the next 3 to 5 years.

The court's decision does not mean the end of the road, and the difficult task of reorganizing is still ahead for Fogelson and his team. However, the court's ruling does mean that Bucktown can begin the process of financial recovery with some confidence that the big banks cannot get their hands on the Bucktown Station property. It means that Fogelson and his team can continue their stated mission of "*Building Neighborhoods and Turning Buyers into Neighbors.*"

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