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Lender Cries Foul over Colorado Developer's Bankruptcy

A Carbondale-based lender has objected to a Colorado developer's Chapter 11 bankruptcy filing, stating that it was done in bad faith. Downtown Aspen Investments LLC filed a motion with the bankruptcy court to dismiss the filing of Aspen Legacy Holdings LLC, the owners of Hyman Avenue Buildings where Little Annie's Eating House and the former Huntsman Gallery are located, as well as the parking lot at the corner of Hunter Street and Hyman.

In the ongoing legal tussle between the two companies, Downtown Aspen Investments alleged that Aspen Legacy had defaulted on a loan given to it for \$9.2 million in October 2008. Consequently, Downtown Aspen Investments called for a judicial decision to be made on whether to call for receivers to oversee Aspen Legacy's financial dealings. A Pitkin County District court judge was supposed to have made a ruling on this matter at a hearing last month.

But the hearing was put off when Aspen Legacy filed for Chapter 11 bankruptcy protection June 23 in the US district court in Denver. This motion is seen as an attempt to circumvent the move by Downtown Aspen Investments to place Aspen Legacy under receivership.

According to the motion filed by Downtown Aspen Investments, Aspen Legacy's bankruptcy filing is also invalid because it was done by Edward Dingilian who was dismissed from his position as manager of Aspen Legacy before the filing was done. Thus he had no authority to file for bankruptcy on behalf of Aspen Legacy.

Dingilian is alleged to have misused about \$500,000 of company funds and siphoned out his gains into family bank accounts in New York. The motion points out that the bankruptcy filing was done less than 24 hours before the judge was due to give judgment at the hearing that would have exposed Dingilian's embezzlement.

However, Aspen Legacy's attorney, Shaun A. Christensen said that the company chose to file for bankruptcy because it was more advantageous to the company than receivership, in which it would have to hand over control of its finances to the receiver. According to Christensen, Aspen Legacy planned to either sell or refinance the Hyman Avenue Buildings which are currently worth \$28 million.

But Downtown Aspen Holding's motion to dismiss contends that Aspen Legacy's reorganization plan is not feasible. The revenue it generates from Little Annie's restaurant and the lease of the parking lot are insufficient even to cover tax and insurance payments, let alone service its loan. Hence refinancing the property is not viable.

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