

Las Vegas Marriott CMBS ‘Tranche Warfare’ Case Settled

By Al Yoon – March 14, 2013

The final bell has rung on a closely watched “tranche warfare” fight between senior and junior commercial mortgage bondholders seeking control of a Las Vegas Marriott.

The bondholders settled their year-long battle over a boom-era mortgage on the JW Marriott Las Vegas Resort & Spa, ending litigation triggered by an offshore firm’s attempt to wrest control of the property from its junior position in the bond hierarchy.

Senior bondholders, including Angelo Gordon & Co. and Winthrop Realty Trust FUR +0.16%, settled with British Virgin Islands-based Galante Holdings and other defendants, said Jacob Pultman, an Allen & Overy lawyer representing the senior bondholders.

John Reilly, an attorney with Squire Sanders LLP who represents Galante, confirmed the settlement but declined further comment.

The two sides had been fighting over Galante’s bid to buy the \$150 million mortgage on the resort for a “fair value” of just \$84.5 million, a price partly determined by a distressed-loan-servicing firm controlled by Galante.

So-called special servicers, which begin their oversight once a loan shows signs of stress, have taken on a key role since the financial crisis because they use their judgment to determine the best way to fix a defaulted loan.

Investors have been critical of servicers’ objectivity in loan workouts, where different types of modifications, foreclosures or other remedies can favor one class of investor over another.

Angelo Gordon and Winthrop objected because Galante’s junior-position bonds had been deemed worthless by an appraisal, and that event should have shifted servicing control to more senior investors who objected to the proposed discounted loan payoff. Galante claimed it had time to exercise a fair-value purchase option even after the appraisal.

The case was closely watched within the \$600 billion CMBS market, as many investors have been buying slices of the securities that granted the rights to appoint the servicer, which often has unilateral power over how distressed loans are worked out.

The decision is also important because \$390 billion in CMBS loans will mature through 2017, presenting similar “control” issues among bonds with defaulted loans, said Mark Fawer, a partner in Brown Rudnick’s real estate practice.

“The big takeaway is that special servicers are probably going to be more attentive to dispel any perception that they are dragging their feet when it comes to obtaining appraisals and determining whether a change in control has occurred,” said Mr. Fawer, whose firm wasn’t involved in the case.

Terms of the settlement weren't released, but it comes about seven weeks after the New York Supreme Court denied Galante a preliminary injunction that would have allowed Galante to retain control of the servicing on the commercial mortgage bond containing the defaulted resort loan.

The "tranche warfare" case began in December 2011 when the senior bondholders accused Galante of a "brazen scheme" to leapfrog over their more senior positions, which would have lost more than \$60 million on a deeply discounted loan purchase.

In the end, senior bondholders won control of servicing, giving them power to oversee the workout of the loan and stop Galante's bid to purchase the loan.

"Our clients are pleased to turn their attention to working out the loan and dealing with the property," Mr. Pultman said. He declined further comment.

Other defendants included distressed loan servicer Trimont Real Estate Advisors, servicer Keycorp Real Estate KEY -0.50% Capital Markets, Aberdeen Realty Holdings and Douglas Rohrer, who acted as a consultant to Galante.

Charles Dorkey, a McKenna Long & Aldridge attorney representing Trimont, confirmed the settlement. Lawyers for Keycorp, Aberdeen and Mr. Rohrer didn't return calls seeking comment.