



Chris Griswold, P.C.

News From the Firm

May 2017

Message From Chris....

This month we talk about an often overlooked issue in lending and a lender's potential liability to a borrower, under certain circumstances. This should be helpful to everyone... (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Loan Commitments

Hypothetical situation: A borrower is buying a portfolio of chain restaurants with a portfolio price of \$50M, and an unconditional liquidated damages penalty of 10% of the purchase price (i.e., \$5M) payable by buyer to seller is not allowed to be conditioned upon my buyer's inability to actually, ultimately obtain financing (actually not an uncommon purchase/sale document concept when a buyer is buying a chain of stores from a large, national franchisor – since all franchisors feel that they're pretty big and bad enough to get whatever they want.... go figure!).

True, most contracts have an escape clause about buyer's failure to obtain financing (just not under this sort of a deal, which commonly has liquidated damages penalties due to seller/franchisor lest buyer/potential franchisee fails to actually close – all predicated upon seller's fervent belief that everybody and their brother wants to buy their licensing rights and become proud franchisees). So, there the buyer is.... Potentially owing lots and lots of money (that can't be secured under any financing vehicle, but must basically be cold cash) if buyer can't get financing....

Lenders, be sure and have "hold lender harmless" statement in favor of the lender in your loan commitment letter. Otherwise, your bank's insurance company might be paying your insurance claim. This can also happen if the loan turns out to be larger than the bank's legal lending limit and the banker can't find a fellow loan participant. Either way, it's a potentially big, big problem, with an easy fix.

What My Clients Are Saying

"It has been a pleasure working with Mr. Griswold. He knows the commercial real estate business well and has been an integral element in our deal making process on some very key transactions."

Kris Davis / Industrial and Investment Advisor / NewMark Grubb / Oklahoma City, Oklahoma

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