

## Distressed Assets and Real Estate

### Selected Transactions and Litigation

Whether it is a solution to a problem or the response to an opportunity, JMBM's team of finance, real estate, bankruptcy, tax and land use lawyers mobilize quickly to address the complex issues surrounding distressed real estate and other assets. To position our clients for the best possible outcome, we act quickly to preserve value and increase cash flow. Examples of our representation include the following:

#### **Receiver Appointed to Complete Hotel Addition, Settle Contractors' Mechanics' Liens and Bonded Stop Notice Claims and Lawsuits and Spin Off Affordable Housing Project**

A commercial bank made an eight-figure construction loan to a hotel to fund an addition. The hotel also obtained financing from the city to build an affordable housing project on part of the property. The construction went over budget and was halted before completion. Contractors filed 13 mechanics' liens, two bonded stop notices and seven lawsuits. JMBM orchestrated a settlement of the construction financing and completion issues, negotiated a settlement with the city to separate the affordable housing project from the hotel and obtained the appointment of a receiver to oversee completion of the construction, all while the hotel continued operations.

#### **Sale of Motel and Country Club**

A commercial bank foreclosed on a motel and country club and entered into a contract to sell the property, together with personal property that was not included in its security interest. Because the personal property had been abandoned by the former owner, JMBM advised the lender to conduct a sale of the abandoned property in order to comply with the terms of the sale agreement.

#### **Restructure of Three Related Hotel Loans**

A commercial bank made two loans to one hotel that was experiencing cash flow problems. The same bank had made a third loan to a related party secured by another hotel. The owners and the bank entered into a complicated restructuring of all three loans to allow cash flow to service the loans accordingly. Errors in title insurance were discovered and corrected. One of the loans had been documented years earlier as a construction loan and the documentation was amended to include loan terms appropriate for an operating hotel.

#### **JMBM Confirms Creditor Plan to Bring End to Highly Disputed Hotel Loan**

JMBM brought a timely end to a disputed hotel loan by filing and confirming a creditor plan that resulted in transfer of the asset to our creditor client.

#### **JMBM Represents Receiver for FDIC Controlled Loan to Hotel**

JMBM represented the Receiver of a major Bay Area hotel who had been appointed by the FDIC, which had succeeded to the loan made by a failed commercial bank. Despite a subsequent bankruptcy by the borrower, JMBM was able to negotiate with the bankruptcy trustee to keep the receiver in place to operate the hotel successfully pending its sale.

#### **Hard Money Lender Forecloses on \$50 Million Subdivision Project**

A hard money lender client called on JMBM to help negotiate and document a forbearance agreement with its borrower, who was developing a 460-lot mixed use project in Central California. When the forbearance expired, JMBM brought suit for judicial foreclosure and on guaranties, forcing the developer into Chapter 11. After a hard-fought evidentiary hearing, JMBM obtained relief from stay on grounds that the borrower was a single asset real estate entity without a plan that could be confirmed, as well as a lack of equity in the property.

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**Commercial Bank Obtains \$25 Million Stipulated Judgment Against Medical Care Facility**

After searching for counsel with the right mix of experience, a worldwide commercial bank engaged JMBM to help it deal with a difficult acute medical care facility borrower. To the delight of the bank, the borrower said it was moving to another lender, but when payments stopped, access to financial records was blocked and communication was limited, something had to be done. Faced with eight loans, bonded indebtedness and a sizeable overdraft, as well as numerous payment and covenant defaults, JMBM orchestrated a multi-faceted effort to bring the uncooperative borrower to the table, resulting in a complex forbearance agreement that required the borrower to take steps to obtain a replacement loan, preserved the bank's rights and remedies and gave the bank a stipulated judgment for every nickel that was owed.

**Hard Money Lender Takes Back Coastal Property on \$15 Million Loan**

A hard money lender found that its developer client had changed the scope of its Coastal Zone project, but had failed to get the entitlements necessary to sell lots and pay off the loan. In response to foreclosure proceedings, the borrower filed a Chapter 11 case. The lender asked JMBM to obtain stay relief. After a hard fought battle, JMBM got stay relief as desired by the client.

**Commercial Bank Sells Troubled \$10 Million Development Loan**

A commercial bank relied on JMBM to devise a strategy for dealing with a \$10 million loan to a developer that had lost its focus and breached numerous loan covenants. Working with its customer, the bank was able to sell its position at par to another developer and avoid taking a loss.

**Community Bank Passes on \$6 Million Letter of Credit to Support Residential Development**

JMBM was asked by a community bank to analyze a customer's request to issue \$6 million in letters of credit to support various phases of a residential development in the Central Valley. The bank turned down the deal when JMBM's research and analysis demonstrated that the proposed credit structure put the bank at risk without a clear right to reimbursement, and that extending credit to the offshore entities involved could violate various laws and regulations, including the USA Patriot Act. The bank's decision turned out to be a good one, as the project ultimately failed.

**Asset Based Lender Collects \$23 Million Loan from Funeral Home Chain and Ends Lender Liability Lawsuit**

An asset based lender was faced with the prospect that a chain of funeral homes that had borrowed \$23 million and then had sued the lender might shut down, leaving the lender with collateral that only an undertaker would cherish. JMBM and its client forged a strategy that helped the borrower engage competent financial consultants, find replacement financing and come to understand that suing its lender would be its death knell.

**Major Commercial Bank Restructures Bonded Indebtedness and Collects Troubled Revolver and Term Loan While Facilitating the Sale of a Business**

A major commercial bank turned to JMBM when the bank's customers decided to sell their troubled business while holding on to their plant. JMBM restructured the bank's reimbursement agreement, thus enabling the bank's customers to keep their plant and lease it to the new buyer. As part of the same transaction, JMBM assisted the bank in structuring the transaction so that the borrower's debt was either completely repaid or fully secured by the leased plant facility.

**Hard Money Lender Ends Developer's Dream Destination RV Park**

The developer had an attractive plan to subdivide a landlocked commercial parcel near Palm Springs and sell lots where snowbird RV owners could spend the winter in the desert sun. The hard money lender made a thoughtful two-phase loan, but after acquisition, the developer stalled, leaving nothing but bare, un-entitled land. Even so, the developer's dream remained strong, and he filed bankruptcy to buy some time. The lender called on JMBM to obtain stay relief.

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**Commercial Bank Works Down \$5 Million Commercial Real Estate Loan in Bankruptcy**

A major commercial bank asked JMBM to protect its interests when its individual borrower filed a Chapter 11 case. The bank's \$5 million loan was secured by three vacant commercial properties. JMBM got the debtor to agree to make monthly payments, to list all three properties for sale and to pay the Bank's attorney's fees.

**GMAC Special Servicer for REMIC Pool Escapes Ian Schrager/Cliff Hotel Melt-Down**

Representing GMAC as the special servicer, JMBM devised a bankruptcy strategy that led to the ability to take control of \$1 million in reserve accounts, while simultaneously dealing in the bankruptcy case with cash collateral issues and an extremely shortened time for proofs of claim, while arranging and negotiating a loan sale. Our client escaped the bankruptcy proceedings and was repaid its \$61.5 million loan in full together with all accruals. JMBM has represented GMAC in numerous CMBS special servicing matters.

**Lender Fights Through Bankruptcy, Gets Receiver, and Forecloses On and Then Sells Two Hotels**

A loan servicer/lender client with nearly \$12 million in loans secured by two adjoining (low-end) flagged hotels near San Francisco International Airport asked JMBM to assist it in the borrower's bankruptcy case after it was dissatisfied with the progress in the case being made by another firm. Relief from stay was obtained, a state court receivership action was commenced to take control of the hotels by a receiver with hotel management experience, the non-judicial foreclosure process was completed with purchase of the hotels by the servicer/lender by a credit bid, but, in an innovative strategy, the receiver was kept in place to insulate the servicer/lender from liability during continued hotel operations while the servicer/lender marketed the property. When a highly motivated buyer for the hotels was found, JMBM handled the sale process, closing the sale of the hotels for \$17 million 20 days after starting work on the letter of intent.

**\$25.5 Million Debtor in Possession Priming Real Estate Secured Term Loan for Developer of Las Vegas Condo Tower**

JMBM represented a non-bank commercial mortgage lender in negotiating (with the debtor, multiple existing lenders and lienors, and the committee), documenting, and handling the bankruptcy court process for a fast-track \$25.5 million debtor in possession priming real estate secured term loan for the debtor developer of a Las Vegas mixed use condominium and commercial towers project (not yet under construction), substantially taking-out the existing senior bank lender, partially taking-out the next junior private mortgage lender, and priming the remaining indebtedness due these lenders and all other junior lenders and lienors, all to permit the debtor to avoid scheduled foreclosures by the two senior lenders. This loan was closed in under 3 months from commencement of work on the letter of intent notwithstanding that the bankruptcy process itself had multiple built-in delays. Additional real estate collateral was provided by the developer's principal as well.

**\$100 Million Pre-Petition Senior Secured Agented Credit Facility and \$130 Million Debtor in Possession Priming Secured Agented Credit Facility for Silicon Graphics**

JMBM represented Wells Fargo Foothill as agent and lender in its \$100 million pre-petition senior secured syndicated credit facility for Silicon Graphics, Inc., and related borrowers when they commenced their bankruptcy cases in the Southern District of New York. The firm had been representing WFF in connection with the credit documentation previously, and seamlessly moved into the workout, pre-bankruptcy planning, and then bankruptcy case phases of the credit. In this complex case, with major outstanding letter of credit under the WFF credit facility, junior secured bondholder creditors, unsecured public debt creditors, substantial unsecured creditors, an active creditors committee, and, ultimately, Judge Burton Lifland as bankruptcy judge, the pre-petition WFF lenders were paid in full and the letters of credit under their facility were fully provided for by a roll-up through a \$130 million debtor in possession priming senior secured syndicated credit facility in which WFF also participated. The DIP loan was repaid on SGI's confirmation of its plan through exit financing.

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**\$97.9 Million Land and Development Loan to an Out-Of-Possession Debtor in a Chapter 7 Bankruptcy Case in Hawaii**

JMBM represented CMR Mortgage Fund LLC, a non-bank mortgage loan company and private equity real estate investor in its capacity as lender in structuring and closing a \$97.9 million A-B loan to Halekua Development Corporation, an out-of-possession debtor in a Chapter 7 bankruptcy case. The loan enabled Halekua to redeem from its bankruptcy estate approximately 161 acres of land west of Honolulu that it owned when it went into bankruptcy nearly four years ago. The loan also provides financing to Halekua for predevelopment and infrastructure costs going forward as it proceeds to develop a 2,000-home master-planned community on the site. The loan involved bankruptcy and creditor's rights; corporate organization and formation; real estate finance, purchase, and development transactions; and land use and environmental matters.

**Private Lender's Arbitration Agreement Enforced in a Bankruptcy Case**

A borrower that obtained a \$5 million loan from a private lender client of JMBM filed a Chapter 11 case and thereafter asserted lender liability claims against the lender in the Bankruptcy Court. JMBM filed a motion to compel the borrower to engage in binding arbitration, as was required by the terms of an Arbitration Agreement which the borrower signed in favor of the lender at the time it obtained its loan. The borrower contended that the Arbitration Agreement was unconscionable, and should not be enforced by the Bankruptcy Court. The Bankruptcy Court granted JMBM's Motion to enforce the Arbitration Agreement and rejected the claim of the borrower that the Arbitration Agreement signed by the borrower was unconscionable and should not be enforced.

**Asset-based Lender Obtains \$10 Million Settlement in Fraud Action Sale of Equipment Portfolio**

A personal property leasing company turned to JMBM when it learned that a \$100 million portfolio of equipment leases it had purchased from a Fortune 500 manufacturer was not being serviced properly and not being re-marked properly. JMBM filed a lawsuit on behalf of its client, which resulted in a settlement valued at \$10 million.

**Commercial Lender Successfully Resolves \$3 Million Breach of Contract/Fraud Lawsuit**

A commercial lender was sued for breach of contract and fraud involving the interpretation of an agreement to provide \$3 million of construction financing. JMBM was retained to defend the lender, and after extensive discovery, obtained numerous orders finding in favor of the financial institution, which resulted in a settlement for the cost of defense. Commercial Lender Successfully Defends Fraud Claim In Sale Of 150-Unit Real Estate Owned Apartment Complex Representing a commercial lender, which had foreclosed a 150-unit apartment complex, and sold it, JMBM obtained a defense award and attorneys' fees award in favor of the lender against the purchaser who contended he was defrauded in the sale of the owned real estate from the financial institution. Not only was the financial institution successful, it was also awarded \$350,000 in attorneys' fees at the prevailing party against the buyer.

**Asset-Based Lender Trumps First Deed Of Trust Holder On Steamboat Springs, Colorado Hotel**

An asset-based lender, which had a second deed of trust on a hotel in Steamboat Springs, was faced with collecting nothing based on the value of the property. It retained JMBM to represent its interest. JMBM was successful in having the first deed of trust holder's lien subordinated to that of the asset-based lender. After a trial in Colorado, the Court subordinated the first deed of trust holder and JMBM's client was determined to have a first deed of trust on the real property, which resulted in payment of full of its \$2 million loan.

**\$33 Million Loan to Vertical Grape Operation in California**

JMBM represented a commercial bank in the bankruptcy of a vertical grape grower/winery and its subsequent bankruptcy. The borrowers consisted of three separate entities, all of which filed Chapter 11 bankruptcy, and which pledged as collateral for the loan different and varying collateral, including real property collateral. During the course of the bankruptcy, the lender was able to collect through the bankruptcy process a substantial portion of the amount loaned and defend the lender's position as the senior secured creditor.

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**Restructure of Construction Loans for Major Commercial Bank**

A major commercial bank engaged one of our current San Francisco JMBM partners to restructure multiple term and construction loans secured by properties throughout California, including retail, commercial office, hotel, medical office building and light industrial properties.

**Disposition of Multiple REO Properties for Commercial Bank's Affiliate**

A major commercial bank engaged one of JMBM's San Francisco partners to represent the bank in connection with the disposition of multiple REO commercial office and retail properties owned by a bank affiliate.

**Restructure of Hotel Loans for Japanese Bank**

JMBM represented a major Japanese bank on restructuring a significant hotel loan on a major property in Sacramento, California, as well as restructuring a loan secured by a marina and other recreational facilities. We also represented the Bank as a participant in a major Hawaiian resort workout of almost \$200 million and a major luxury branded-chain hotel in connection with a workout and deed-in-lieu.

**Restructure of Bank Syndicate**

Served as special counsel to a Japanese bank in connection with restructuring bank syndicate, repurchase of loans and the sale of \$80 million notes secured by a luxury resort.

**Counsel to Special Loan Servicer on Hotel Loans in CMBS Pools**

Served as special hotel counsel to Midland Loan Services in its capacity as Special Loan Servicer on troubled hotel loans in CMBS pools, including a 9-hotel portfolio and a number of individuals hotel loans. Work included management, franchise workout, fiduciary duty advice and sale.

**Bankruptcy Reorganization of International Holdings of More Than \$2 Billion**

Represented major Japanese financial institution in the first and largest concurrent Japan-US bankruptcy reorganization case with international holdings of more than \$2 billion. This massive effort involved bankruptcy, litigation, contract negotiations, due diligence, disposition, domestic and international tax, and securities.

**Deed-in-Lieu Transaction and Disposition of Hotel Property**

The firm's real estate lawyers handled a deed in lieu transaction with respect the Westin Kauai, and the subsequent disposition to Marriott.

**Workout \$24 Million in Residential Development Construction Loans**

JMBM represented a community bank in the workout/liquidation of \$24 million in construction loans related to a single-family luxury home developer. The credit was restructured to provide for cross collateralization and liquidation of the collateral over an agreed time period; bankruptcy was averted.

**\$23 Million Agricultural Loan Restructured**

JMBM represented a lender in the successful restructure of a \$23 million agricultural loan in California's Central Valley. The transaction was completed in less than 3 weeks to accommodate deadlines for funds availability and to obtain and perfect additional real estate collateral.

**Primary Depository in Subprime Mortgage Case Kept Functioning So That Asset Liquidation and Mortgage Transfers Could Take Place**

JMBM represented the primary depository in the largest subprime case in the country, handling the deposit relationship in a Chapter 11 case and keeping the Debtor operating through challenging times until assets were liquidated and a new depository substituted. The client was able to maintain all cash management systems and keep more than 100 accounts functioning so that asset liquidation and mortgages could be transferred.

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### Please Contact Us

For information as to how the JMBM Banking & Financial Services Group can help you solve your problems – or take advantage of opportunities – with distressed assets and real estate, please contact us.

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