

Bankruptcy dims Vista

By April Charlton/Senior Staff Writer



Empty houses under construction line Maria Vista Estates near Nipomo. Bankruptcy filings cloud the future of the development. / TPR/Bryan Walton

A long and controversial fight to construct 77 single-family homes above the Santa Maria Speedway has led project developers to bankruptcy and potential bank foreclosure.

But it remains to be seen whether Security Pacific Bank will prevail in court next month, becoming the new owner of Nipomo's Maria Vista Estates, which is currently owned by business partners Erik Benham and Mark Pender.

"It's possible that the bank could foreclose and take it all," said John Fricks, Maria Vista Estates attorney. "But Erik (Benham) has filed for personal bankruptcy to stop that from happening. His major asset is the project."

Bankruptcy documents show that Maria Vista was recently appraised at a value exceeding \$44 million.

There are 25 completed homes at Maria Vista Estates, with one home sold and occupied, 15 homes that are approximately 70 percent complete and 37 lots that have full entitlements for utilities, but where homes haven't been constructed yet, according to court documents.

Benham and Pender owe Security Pacific Bank \$23.5 million for two loans they took out to finance construction of Phase 1 and Phase II at Maria Vista Estates. The loans became due last year.

Hearings will be held in mid-September in U.S. Bankruptcy Court in Santa Barbara to decide whether the bank can proceed with foreclosure, and determine who owns the property's first deed of trust, worth \$8 million.

A deed of trust can be used as security for a loan. It names the trustor, or borrower, the trustee, which is an entity that holds the "bare or legal" title, and the beneficiary, which is the lender. It also identifies the original loan amount and a legal description of the property.

Benham, who is named as a debtor in the bankruptcy case, claims he's the first owner of the deed, with respect to certain lots at the subdivision, while Security Pacific claims its deeds trumps Benham's in respect to all 77 lots, according to court documents.

Court documents maintain that Benham, a Santa Maria resident, and Pender never modified the original deed of trust to include all of Maria Vista's lots as the bank claims, when they became partners in April 2003, and used the deed as collateral for the construction loan. Benham claims the bank changed the deed without his or Pender's knowledge.

"Mr. Benham contends the bank's exhibit ... is a fraud and was fraudulently recorded," according to documents filed in the bankruptcy case, which also show Benham's debts at approximately \$30 million.

Calls to Security Pacific Bank and Pender's attorneys for comment weren't returned by press time.

Earlier this year, U.S. Bankruptcy Court Judge Robin Riblet, who also converted Maria Vista's Chapter 11 filing to Chapter 7 on July 9, ruled in favor of a recent motion by the bank to foreclose

on Benham and Pender, and lump both bankruptcy cases together, which was appealed by Maria Vista's Chapter 7 trustee.

Riblet is expected to hold a trial in Santa Barbara on Sept. 22 that will ultimately determine who owns the deed and the value of the Maria Vista Estates property.

"The lien of Mr. Benham is the asset," Benham's attorney, Vaughn Taus, wrote in a brief filed in opposition to the bank's motion. "Determination of the nature and priority of the lien and what constitutes an asset of the estate are core proceedings ... and must be fully litigated before the court."

Benham purchased the 84.4 acres that make up the subdivision, formed a general partnership with Pender, sold the parcels to Maria Vista Estates — the sale price was in excess of \$8 million — along with the promissory note that was secured by the deed of trust, according to court documents.

"The filing of this bankruptcy was, in part, to prevent the foreclosure of the MVE property, since the foreclosure risked wiping out Mr. Benham's major asset, which is the Benham Deed of Trust," Taus also wrote.

Maria Vista Estates filed for Chapter 11 Bankruptcy in March last year, while in the midst of a legal battle with the Nipomo Community Services District, which refused to turn on water meters for 25 completed homes at the subdivision.

Because the district wouldn't accept the project's water and sewer improvements at the time, escrow couldn't close on any of the completed homes, and multiple sales of homes at Maria Vista fell through, according to court documents.

"Our bankruptcy has nothing to do with the real estate market or the design of the project," Benham said.

Benham declined further comment.

He is also involved in numerous other civil lawsuits related to the postponed development of Maria Vista Estates. Benham started the project a decade ago and has met with opposition and unfounded delays every step of the way, he said.

BY THE NUMBERS:

\$44,000,000 — Appraised value of the 77-home Maria Vista Estates

\$23,500,000 — Amount owners owe bank for loans

1 — Home occupied

Q&A:

QUESTION: What is the difference between Chapter 7 and Chapter 11 bankruptcy filings?

ANSWER: Chapter 7 bankruptcy is usually referred to as straight bankruptcy and most times leads to liquidation of a company. A company or business is normally able to continue operating under the direction of a court-appointed trustee until the issue is settled.

Chapter 11 is the most common form of bankruptcy filing, allowing a company or business to

stave off creditors' lawsuits while it reorganizes its finances. The debtor's reorganization plan has to be accepted by the majority of its creditors, and the debtor also remains in control of the business and its assets during reorganization.

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