



# Chapter 11 Cases.com

Quick, Easy Access to Bankruptcy Court Documents

## ***Bankruptcy Court Dismisses Philadelphia Rittenhouse Developer's Chapter 11 Case***

Bankruptcy Judge Stephen Raslavich (Chief Judge of the Eastern District of Pennsylvania Bankruptcy Court) entered an order and a 59-page opinion on Wednesday dismissing the chapter 11 bankruptcy case of Philadelphia Rittenhouse Developer, L.P. Philadelphia Rittenhouse Developer filed for chapter 11 protection in December of last year, largely as a result of a dispute with its primary secured lender ([more details on the chapter 11 filing can be found here](#)). The secured lender, iStar Tara, LLC, subsequently asked the bankruptcy court to dismiss the bankruptcy case ([more details on the motion to dismiss can be found here](#)), while Philadelphia Rittenhouse Developer sought to make use of iStar Tara's cash collateral and proposed a plan of reorganization ([more details on the plan of reorganization can be found here](#)). Judge Raslavich's opinion addresses both the motion to dismiss and the motion to use iStar Tara's cash collateral.

Philadelphia Rittenhouse Developer, L.P. is a joint venture between ARC Properties, Inc., based in Clifton, New Jersey, and Philadelphia-based Wheeler Brothers Holdings, LLC. The company was formed to develop 10 Rittenhouse Square, a 33-story condominium building in Philadelphia. The building, which was designed by Robert A.M. Stern Architects and built by Turner Construction, welcomed its first residents in October 2009 and features amenities such as a chauffeur-driven 2010 Mercedes-Benz S550, according to [the development's marketing website](#). The building includes "some of the largest penthouses in Philadelphia" which were expected to sell for as much as \$15 million each, according to one news report. For less well-heeled buyers, one-bedroom condominiums start at \$600,000. It also includes two retail spaces, one of which is rented to clothing retailer Barneys, Inc. and the other of which is rented to a restaurant called Serafina. According to the court's opinion approximately 107 of the building's 144 condominium units remained unsold at the time of the court's hearing on the motions.

In the cash collateral motion, the debtor sought access to rents paid by Barneys (Serafina is not yet paying rent) and proceeds of condominium sales to fund its operations. Both the rent payments and the sale proceeds have been being remitted directly to iStar Tara since approximately September 2010. The court noted that there was a dispute between the parties regarding whether those amounts constitute property of the bankruptcy estate and cash collateral, although iStar Tara and the debtor were operating under a consent order allowing limited cash collateral use from the end of February through the end of April. Thereafter, the parties entered into a DIP loan agreement to allow funding of the debtor's operations until the motions were decided by the court.

The court, in determining the motions, also addressed the debtor's proposed plan of reorganization in the opinion. In its pleadings, iStar Tara had asserted that the proposed plan was "patently unconfirmable" for a number of reasons, in addition to its assertion that the bankruptcy case was filed in bad faith and should thus be dismissed. Among the reasons that iStar asserted that the plan was unconfirmable were that the debtor would not be able to satisfy the standards for "cram down" because it would not have an accepting non-insider impaired class of creditors, that the plan violates the absolute priority rule, and that the plan was not



# Chapter 11 Cases.com

Quick, Easy Access to Bankruptcy Court Documents

feasible because, according to the opinion, "the Debtor's revenue and expense projections are materially inaccurate in virtually all respects" (iStar's assertion, not the court's conclusion).

In deciding the pending motions, Judge Raslavich begins by separating the inquiry into whether the case was filed in bad faith into two issues: first, is there the "presence of subjective bad faith" and, second, does the debtor have "no realistic chance of reorganization." With respect to the first inquiry, the opinion provides a lengthy analysis of the evidence relevant to 14 factors evidencing bad faith drawn from *In re SB Properties, Inc.*, 185 B.R. 198 (E.D. Pa. 1995). The court focused primarily on two factors - whether the "petition effectively allows the debtor to evade court orders" and whether "the debtor filed solely to create the automatic stay." With respect to those elements, Judge Raslavich described the filing as "a transparent, and particularly blatant, litigation tactic, which in turn is highly probative of the Debtor's subjective intent and is, indeed, suggestive of bad faith." After further analysis, the opinion concludes that the "great majority of the SB Properties factors are evidenced in the record before it, some to a particularly egregious degree, and the Court concludes, with little hesitancy, that the Debtor's bankruptcy case was not commenced with subjective good faith."

The opinion then turns to the second inquiry - namely, whether Philadelphia Rittenhouse has any realistic chance of reorganization. In doing so, the court considered iStar Tara's "barrage of criticism" regarding the proposed plan of reorganization and expressed its agreement that "the instant Plan could never be confirmed." The court provided three "independent deficiencies" which it determined would render the proposed plan unconfirmable:

1. Violation of the absolute priority rule
2. Failure to "provide for preconfirmation adequate protection with respect to the Debtor's proposed usage of cash collateral, coupled with the failure of the plan to provide for iStar's post confirmation realization of the indubitable equivalent of its secured claim"
3. Inability to satisfy the requirement of 11 U.S.C. § 1129(a)(10) - (acceptance of the plan by an impaired class of creditors)

The court's opinion addresses each of these three deficiencies in significant detail. Moreover, the court emphasized the point by stating in a footnote that "the Debtor has no other viable Plan option." The court therefore dismissed the bankruptcy case.

You can purchase a copy of [the court's 59-page opinion here](#). A copy of the court's [order dismissing the case can be purchased here](#).