The Decision to Continue Funding a Troubled Loan: Lessons from the Tamarack Resort Foreclosure

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When the Titanic hit an iceberg, it only had enough lifeboats for a third of its passengers. Tamarack Resort's creditors have a similar problem; there are not enough life boats.

The "life boat" for a troubled loan is collateral. It is the most likely repayment source. A lender can foreclose and sell collateral when a borrower cannot pay its debt. However, collateral will only save the lender to the extent it has value.

Tamarack Resort is collateral for a loan administered by Credit Suisse. Several contractors and material suppliers also have liens against the resort. When Credit Suisse started foreclosing on the resort, the principal balance on the loan was $247,750,000. Tamarack also owed several million to contractors. Unfortunately, much of the resort's value at the start of the foreclosure is now gone. When the foreclosure sale finally occurs, much of the outstanding debt will remain unpaid. The question is whether something could have been done differently to capture more value for the creditors.

In the summer of 2008, shortly after starting the foreclosure, Credit Suisse commissioned an appraisal that established the value of the resort at $236,300,000. It is important to note that the value was premised upon the assumptions that Tamarack would: (1) complete construction on the Village Plaza (six condominium and retail buildings located in the center of the resort); (2) continue golf and ski operations; and (3) continue prudent management and aggressive marketing. In order for these conditions to occur, Tamarack needed capital.

Completing the Village Plaza was a big project. When the foreclosure started, construction was approximately sixty percent complete. Tamarack needed about seventy five million dollars to complete construction. Nonetheless, it was arguably worthwhile to complete the Village Plaza because nearly all of the residential units were sold, subject to completion. Completing construction would have resulted in additional sales. The project would have also had much better "curb appeal" to prospective investors.

Of course, the resort was more than land and buildings. It was a service business. Much of the value derived from the fact that it was a going concern. Credit Suisse's appraiser recognized that if you take away the golf and ski operations, much of the resort's value disappears.

Credit Suisse had the opportunity and ability to complete construction and ensure that resort operations continued while the court worked through the complicated and time

consuming foreclosure process. It asked the court to appoint a receiver. Receivers are independent custodians that manage assets during litigation to prevent deterioration and lost value. Courts appoint receivers and give them authority to preserve and, when appropriate, sell property to maximize its value. The court approved Credit Suisse's request for a receiver.

In order to preserve, manage and, perhaps, sell Tamarack, the receiver needed money. As the largest creditor, with the most interest in preserving the collateral, Credit Suisse (and some of its backers on the Tamarack loan) initially promised the court they would provide the capital. They committed to invest ten million dollars for the first three months of ski operations, and to weather proof the Village Plaza for winter. They added another $1.7 million at the end of the first three months. In exchange, Credit Suisse and its backers got preferential repayment terms for the new funds.

After the initial contributions, however, Credit Suisse and its backers changed course and refused to fund any further ski operations, golf operations, resort management or construction. As a result, in 2009 Tamarack ended the ski season early and closed. Because there was no capital, the court eventually discharged the receiver in July of 2009.

Over a year after the resort closed, Tamarack reported in a federal Bankruptcy Court filing on May 7, 2010 that it was only worth $58,000,000. This estimate obviously took into account the poor economy, but also reflected the fact that the resort was closed and construction was incomplete. If Tamarack stayed open and completed the Village Plaza, would that value be higher? With proper funding, the receiver could have completed Village Plaza construction and continued the ski and golf operations. More importantly, the receiver could have actively marketed and sold the resort, free from the entanglement of liens. Perhaps the cost to preserve the resort would exceed any possible benefit. On the other hand, additional investment may have maintained significantly more value for the creditors.

Tamarack illustrates the difficult dilemma for creditors and investors when new construction and development projects stall before completion. When a project stalls, creditors and investors have two difficult choices: they may stop investing additional money, but be left with incomplete, unsellable collateral; or they may continue investing additional capital and incur additional risk, in the hope of recovering more value from the collateral. There is no one correct answer for all scenarios. The decision will test the wit and judgment of anyone called upon to put more money into a troubled venture.

It is worth noting, after the resort closed, the Tamarack homeowners stepped in to run the ski operations. Other creditors initially ran the golf course, but the homeowners eventually took over golf operations, as well. The homeowners' investment of time and money undoubtedly protected not only their own interests, but those of the other creditors. To the extent Tamarack retains value, the homeowners deserve much of the credit.

The Tamarack Resort foreclosure sale is still yet to occur. The actual amount that creditors will recover is unknown. However, there is little doubt that there are not enough lifeboats. We are left to wonder whether different decisions could have minimized losses and saved more creditors.