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The Incredible Husk: 175 liens and 60 law firms later, Bloomfield Park creditors may settle for 14 cents on the dollar

By [Chad Halcom](#)

One of the largest real estate foreclosure battles in Michigan history could settle for just under 14 cents on the dollar in a proposed deal for more than 90 contractors to walk away from mounting litigation and unpaid balances for work on the failed Bloomfield Park development.

The half-finished husk of a planned \$350 million, 18-building, 700,000-plus-square-foot mixed-use development has weathered three Michigan winters on the Pontiac-Bloomfield Township border, ever since its owners halted construction in November 2008 because of ongoing financial disputes and the global lending crunch.

Today, 103 companies have 175 liens on the property totaling more than \$48 million for unpaid balances on their contracts -- but much of that is considered redundant because some general contractors and subcontractors or suppliers filed liens on the same unpaid services or materials. All told, attorneys believe a little over \$25 million is actually owed.

An additional 24 companies have had their liens dismissed by agreement or court order since the shuttered development landed in litigation in early 2009.

But most of those who remain are expected to inform an Oakland County judge today that they are completing a settlement with San Francisco-based **Wells Fargo Bank NA** that will discharge the liens for a collective payout of around \$3.5 million -- just 1 percent of the original project value -- subcontractors and attorneys told *Crain's* last week.

The liens are a key obstacle to Wells Fargo taking possession of the development from a receiver in a lawsuit before Oakland County Circuit Judge Wendy Potts to foreclose on the property after the landowners defaulted on a \$40 million loan balance.

Wells Fargo hasn't announced its plans for the site once it takes possession, but construction experts say it would be difficult to finish in its current form because of crainsdetroit.com/.../the-incredible-husk...

GLENN TRIEST



Fallen signs and unfinished buildings mark the scene of what had been planned as an 18-building, \$350 million mixed-use development on the border of Pontiac and Bloomfield Township.

The Lawsuits

- **Wells Fargo NA v. Coventry II DDR Harbor Bloomfield Phase I LLC et al.** Filed Aug. 21, 2009, Oakland County Circuit Court, Judge Wendy Potts. Primary lender brings lawsuit to foreclose on Bloomfield Park against owners and more than 120 lien holders. Status and settlement conference today; otherwise, a trial is set for Oct. 3.

- **B&V Construction Inc. v. Coventry II DDR Harbor Bloomfield Phase I LLC et al.** Filed Aug. 21, 2009, Oakland County Circuit Court, Judge Wendy Potts. Wixom-based labor-materials supplier sued to foreclose on a \$1.4 million nonpayment lien on a \$10.1 million contract. Consolidated with the Wells Fargo lawsuit filed the same day, this combined case has absorbed at least four other lien holder lawsuits filed around the same time. Status and settlement conference today; otherwise, a trial date is set for Oct. 3.

- **BP1 LLC v. Coventry Real Estate Fund II LLC, Developers Diversified Realty Corp. et al.** Filed April 3, 2009, Oakland County Circuit Court, Judge Michael Warren. The Crain

the deterioration in exposed building materials.

The 90-acre project site, once meant to house more than 1.7 million square feet of retail, office park and condominium living space, is assessed at a total market value of just under \$12.3 million for 2011, according to the Bloomfield Township Assessor's Office and the **Oakland County Equalization Division**, which handles assessing services for Pontiac. Meanwhile, project developer Craig Schubiner of Bloomfield Hills-based **Harbor Cos.** and his co-owners on the project, **Developers Diversified Realty Corp.** of Beachwood, Ohio, and New York-based **Coventry Real Estate Advisors**, are alleged to owe more than \$65 million to Wells Fargo and the construction lien holders.

The settlement deal, if approved, would mostly pass over the five largest general contractors on the project and distribute most settlement funds to their subcontractors, said Bob Washer, president of Pontiac-based **Micco Construction LLC**. Micco was general contractor on two of the Bloomfield Park buildings -- a proposed **Barnes & Noble Inc.** bookstore and a three-story office-retail center in the park along Telegraph Road.

"We are agreeable to resolving it. But then we were also agreeable to finishing the (construction) job back in 2008. So it's hard to say what will really happen," Washer said. "The subcontractors are people we want to maintain a good relationship with,

through a really bad situation. We're not intending to collect any money out of this and stick it into our own pockets."

"The cost of litigation was going to be more than we could expect to collect if we fought harder," said Christopher LaBelle, president of Macomb Township-based **LaBelle Electric Services Inc.** and an electrical subcontractor on two unfinished buildings. "And, something's better than nothing."

LaBelle and Mitchell Shammass, vice president at **Modern Mirror & Glass Co.** in Roseville, both said the agreement is to settle for around 13.6 percent of the unpaid balances and allow Wells Fargo to foreclose on the property.

But Patrick Facca, partner at Troy construction law firm **Facca, Richter & Pregler PC** and attorney for general contractor **Clark Construction Co.**, said the percentage may change slightly when finalized.

"My understanding was, this is it -- take it or leave it," Shammass said. "And when you're talking about (nearly) \$1 million in receivables dwindling to around \$135,000, that's a bitter pill. But it's being recommended by all the general contractors, and I'll take what I can. The alternative was nothing."

It was unclear if the general contractors' attorneys could collect fees from a portion of the settlement; attorneys said the five companies shouldered much of the litigation cost since lawsuits sprang up two years ago.

Shammass and Facca also said more than 90 percent of the lien holders are on board with the agreement; talks continue with a small group of holdouts, who fluctuate in number from day to day.

Schubiner, meanwhile, has a separate pair of lawsuits before Oakland Circuit Judge Michael Warren against Coventry and **Developers Diversified Realty Corp.** [crainsdetroit.com/.../the-incredible-husk...](http://www.courts.michigan.gov/crainsdetroit.com/.../the-incredible-husk...)

Court, Judge Michael Warren. The Craig Schubiner entity that owns 50 percent of Bloomfield Park seeks \$50 million damages against the other owners, claiming lackadaisical management leading up to the national economic downturn cost him the chance to be bought out of the Park. Stayed since July 9, pending an appeal by Schubiner's attorneys, which was denied last month. Motion to reconsider is pending at the Michigan Court of Appeals.

• **BP3 LLC v. Coventry Real Estate Fund II LLC, Developers Diversified Realty Corp. et al.** Filed April 3, 2009, Oakland County Circuit Court, Judge Michael Warren. The Craig Schubiner entity created to address state and local government regulations and approvals for Bloomfield Park seeks \$1.2 million for alleged nonpayment under a project development agreement with the other owners. Stayed since July 16, pending resolution of the BP1 appeal.

• **Park Theatre LLC v. Coventry II DDR Harbor Bloomfield Phase I LLC, Travelers Casualty and Surety Co. of America.** Filed June 12, 2009, Oakland County Circuit Court, Judge Nanci Grant. Entity created by **Imagine Entertainment Inc.** President Paul Glantz to build an Imagine theater at the Park sued the owners and a company that bonded its project. Accepted an August 2010 case evaluation award of \$225,000; case dismissed in November.

• **Cunningham Limp Co. v. Park Theatre LLC.** Filed May 8, 2009, Oakland County Circuit Court, Judge Nanci Grant. The contractor hired to build the Imagine theater sued Park Theatre after work stopped. Originally rejected the August 2010 case evaluation award, but later agreed to a resolution and the case was dismissed in November.

• **Coventry Real Estate Advisors v. Developers Diversified Realty et al.** Filed Nov. 4, 2009, New York State Supreme Court, Justice Shirley Werner Kornreich. Coventry seeks \$500 million damages in a lawsuit alleging fraud, malfeasance, mismanagement, violation of fiduciary and contractual obligations and self-dealing in 12 major real estate projects on which the two companies were co-investors across the country. The joint venture portfolio includes Bloomfield Park. Case awaits a hearing date May 3 on various motions.

Developers Diversified Realty

connected to the management of Bloomfield Park. He declined to comment to *Crain's* while those cases are still pending.

Coventry and Developers Diversified Realty

also did not return phone calls. More than 60 law firms are involved either in the pair of consolidated lawsuits tied to the Wells Fargo foreclosure or in one or both of Schubiner's two lawsuits against the Coventry-Developers Diversified Realty team. Total legal bills in all the cases since construction stopped could be well above \$5 million, according to estimates from attorneys in the cases who asked not to be identified.

"Clearly everyone believes the property is worth significantly less than it was, so no one is certain yet what they'll be able to collect or (of) the relative strength of each (company's claim) in court," said Alan Greene, member at **Dykema Gossett PLLC** in Bloomfield Hills and lead attorney for Wells Fargo. "But there won't be enough money to pay off all the outstanding debts. That much everyone knows for sure."

End in sight?

If Wells Fargo can reach a deal with all or nearly all the contractors this week, it would eliminate the need for a judge to determine which creditors take priority -- the bank or the 103 lien holders -- and Wells Fargo could take the land and wrap up the lawsuit within three or four months, attorneys handling the case said.

First on the list of bills to be paid, once the land comes out of receivership, is around \$1.7 million in unpaid property taxes for the past two years, according to Greene and county records.

A long stay on court proceedings in the developer lawsuits also could be nearly over. Schubiner, through two legal entities created for developing the park, seeks a combined \$51.2 million in damages against Developers Diversified Realty, Coventry, its investment fund **Coventry Real Estate Fund II LLC** and their joint venture.

Those entities acquired 50 percent ownership and took over management of the development project in late 2006 when Schubiner redeemed an outstanding mortgage. Schubiner alleges the companies breached their agreements with him by failing to bring the development along to completion before the lending market meltdown in late 2008 and by failing to pay him for predevelopment costs.

One of those cases was a week from trial last summer when the judge placed a stay pending Schubiner's request to appeal two pretrial rulings. The **Michigan Court of Appeals** rejected that request in March, but Schubiner's attorneys have asked the court to reconsider.

"We of course are vigorously defending that claim and deny there was anything approaching negligence by our client," said Steven Susser, partner at Southfield-based **Young & Susser PC** and co-counsel for Developers Diversified Realty in the Schubiner suits. "It's ironic that Mr. Schubiner is suing us, considering that our involvement is what originally allowed him to stay involved in this project.

"We did everything we could, and then some, to make this project work in the failing economy and what was probably the worst climate for lending and real estate in our state's history."

Where it all went wrong

Bloomfield Park's roots go back to 1992, when Schubiner began acquiring the land, but the current legal quarrel dates back to 2006 when Coventry and Developers Diversified Realty redeemed his development from foreclosure.

The Bloomfield Township board in 2000 voted unanimously to deny a zoning ordinance modification to accommodate the project, and Schubiner later went to Pontiac city officials to initiate an annexation of most of the property. Pontiac voters and a majority

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...of the approximately 20 residents in the affected district approved annexation in September 2001.

After some legal bickering over the annexation, the township and the city eventually reached an agreement that included a joint development council to oversee the district and ensure both governments had input.

The first serious signs of trouble emerged in late 2005 when Schubiner and a project predevelopment lender fell into a dispute, and by early 2006, for reasons unclear, he lapsed on payments for a \$35 million predevelopment loan.

His **BP Associates LLC** was in a six-month redemption period after a mortgage holder held a foreclosure auction on the project site when the joint venture of Coventry and Developers Diversified Realty paid off the loan and acquired 50 percent ownership and managing control of a new development company. Before the Coventry-Developers Diversified Realty involvement, Schubiner alleges he had signed six leases and 23 letters of intent with prospective retail tenants such as **H&M, Bebe, BCBG, J. Jill, Sephora, Lucky Brand Jeans, Banana Republic, Aeropostale, Ann Taylor Loft, Bath & Body Works, Bravo** and **Hyde Park Steakhouse**.

The new owners took out a \$48 million loan from Wells Fargo later that year, and in 2008 Developers Diversified Realty -- which owns 20 percent of the joint venture with Coventry -- paid back its share of the loan for \$9.8 million. The owners halted construction in November 2008, shortly before the remaining \$39.2 million became due to Wells Fargo, according to the Wells Fargo lawsuit.

The owners had been operating on equity from Coventry and Developers Diversified Realty, and a mezzanine loan from Developers Diversified Realty-created **MV Bloomfield LLC**, but had yet to acquire an actual construction loan by the time the market collapse in late 2008 virtually dried up global lending.

In late 2009, a judge appointed Farmington Hills-based **Finsilver/Friedman Management Corp.** as receiver for the property to handle site security, property tax payments and seasonal weatherization of the incomplete buildings while the litigation is pending.

Finsilver has paid the 2008 property taxes, at Wells Fargo's direction, but has not paid the 2009 or 2010 taxes, according to county records. The unpaid balance to date totals nearly \$1.7 million.

And the more the property declines in value, the less its owners and lien holders stand to collect whenever the litigation is finally resolved, attorneys said.

"We've had some real good faith negotiations with the Wells Fargo people, but we have some discussions still to get through to resolve the priority issue," said Ron Deneweth, partner at Troy-based **Deneweth, Duggan & Parfitt PC** and attorney for five of the 103 lien holders.

"If we can resolve the liens, we're hoping to do that by the hearing (today)."

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