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Charting a New Course

Hedge Fund's Involvement Facilitates Quick Resolution

by Randall Reese

When hedge fund Putnam Bridge first became involved in the chapter 11 case of Marina Puerto del Rey, Inc., there were serious doubts about the debtor's prospects for a successful reorganization. The bankruptcy filing was the result of a long-running dispute between the debtor and its secured lender, FirstBank Puerto Rico, and that lender was aggressively challenging the propriety of the bankruptcy. Within the first three weeks of the case, FirstBank filed motions to prohibit the debtor's use of cash collateral and to dismiss the debtor's case. In a stunning about-face, Putnam's counsel would announce at a hearing less than two months later that FirstBank and Putnam had entered into a plan support agreement resolving many disputes and paving the way for a rapid emergence from bankruptcy.

Putnam had experience acquiring substantial distressed assets in Puerto Rico prior to becoming involved in the Marina Puerto del Rey case. Several months earlier, Putnam had made an \$80 million acquisition of a mixed-used development in San Juan. However, the marina acquisition presented a new set of unique challenges. Marina Puerto del Rey owned and operated the largest marina in the Caribbean, but had been mired in protracted state court litigation arising out of an approximately \$47 million secured loan agreement entered into in 2009.

By the time Marina Puerto del Rey filed for bankruptcy protection in late December 2012, it faced "a liquidity and operational crisis, jeopardizing its employees and going concern, and threatening to result in a chapter 7 liquidation," says Zachary Smith, Putnam's lead counsel in the transaction who is now a partner in the Charlotte office of Moore & Van Allen PLLC. "I have been involved in contentious cases like this before, in Puerto Rico and elsewhere," he notes, "but this case was particularly tense."

Smith's view is shared by Roberto Abesada-Agüet of Correa-Acevedo & Abesada Law Offices and Juan A. Cuyar Cobb of Fernandez, Collins, Cuyar & Pla, local Puerto Rico counsel who also represented Putnam Bridge in the transaction. "From a legal perspective, my opinion is that if our client had not acquired the marina and the process proceeded smoothly and on time, the case would likely have continued along a litigation path for an extended period of time and ultimately may have converted to chapter 7, which would have had a negative impact not only on the marina and its employees, but potentially on Puerto Rico generally," says Abesada-Agüet.

The case presented a situation fraught with risks, but also ripe with opportunity for a fund experienced in distressed transactions and familiar with the Puerto Rico market. "The marina was a high-profile real estate asset in Puerto Rico," Smith says. "There was attention to it and we follow cases and developments in Puerto Rico constantly. When we first became involved, the debtor was not actively seeking an investor or acquirer, we did not have any existing connection to the debtor, and we had to create the necessary momentum and drive forward," says Smith.

One of Putnam's initial goals was to create an atmosphere that would be conducive to negotiating a consensual resolution. Those efforts bore fruit quite rapidly. By early March, Putnam and FirstBank had entered into a plan support agreement. That was

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quickly followed by a series of separate but interrelated agreements among Putnam, FirstBank, the debtor, various non-debtor affiliates, and the debtor's controlling shareholder. On April 29, the parties filed their proposed joint plan of reorganization, which provided for Putnam's purchase of the marina and certain non-debtor assets "free and clear," the settlement of all pre-petition litigation, and payment in full in cash of all allowed, non-insider unsecured claims. No solicitation of the plan was necessary and the plan was confirmed by Judge Enrique Lamoutte Inclan on May 30, 2013. The sale transactions closed and the plan became effective on the same day.

While plan support agreements and the transaction structures utilized in the Marina Puerto del Rey case are seen with some frequency in complex cases, the case seems to denote one of a relatively small number of times that such a mechanism has been employed in a complex chapter 11 case in Puerto Rico.

Additional complexity came from incorporating settlements of non-bankruptcy litigation into the plan. "It becomes complicated because you are dealing with litigation in Puerto Rico local

courts that has been going on for some time," says Smith. "There are very specific local requirements for addressing and consensually concluding litigation of that sort, including through a chapter 11 plan." The nature of the assets being transferred and their importance also necessitated additional attention. "It is a different type of asset that had to be documented very carefully to ensure various specific protections, not just as a matter of federal bankruptcy law, but also local Puerto Rico law," according to Smith.

Smith points to several aspects of the case strategy that were crucial to moving forward quickly. "There was a concerted effort to move things forward with the parties [the debtor and FirstBank] simultaneously and also to keep the court informed of our presence and our interest in trying to work with the parties." Additionally, Smith emphasized the importance of coordinating seamlessly and constantly with a seasoned group of professional advisors who had local knowledge and experience. "We worked with a pretty extensive advisor team because it is critical to draw from concerted and deep resources in navigating the environment."

Under Putnam's ownership, Marina Puerto del Rey appears poised to prosper.

The successful acquisition of the project "opened a window of opportunity to enhance the island's overall economy," Abesada-Agüet notes. "The acquisition included an agreement to acquire other adjacent land in order to develop it and create an integrated cross-services tourism project next to the marina that will enable hundreds of new jobs in construction and tourism." After the transaction closed, a \$450 million renovation and expansion project was announced. "The confidence of foreign investors shows that we are back on track to achieve growth and development of a strong tourism industry, capable of supporting the foundation of a prosperous society," Puerto Rico Governor Alejandro Garcia Padilla says. "I see in the history of Puerto del Rey a metaphor for what is going to happen in Puerto Rico." ▣

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