

Property near mall finally has owner

California group gets Chandler Elevation

by **Luci Scott** - May. 10, 2012 03:33 PM
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The Arizona Supreme Court has decided that investors in a California-based company own the high-profile, 10.5-acre parcel Elevation Chandler near Loops 101 and 202.

For three years, Point Center Financial of California and Phoenix foreclosure speculator Tom Peltier have been fighting in court over ownership.

The court's opinion, issued Friday, ends that legal battle and clears the way for investors to sell the parcel, which has drawn considerable interest from potential buyers.

"Even prior to the decision, there have been a few groups following up with us to see if the decision was out yet," said Rene Esparza, Point Center's loan servicing manager and asset manager.

Esparza declined to identify prospective buyers or the possible price.

A majority of the site's 270 investors, weighted by how much money they have in the project, will vote on whether to sell and, if so, which offer to accept.

"Even though we're negotiating the deal, we want to present to our investors what we believe is the best deal for them," Esparza said.

There have been distressed sales in the commercial market, but Elevation Chandler is a premium location. Its value was muddied because of the litigation, which Esparza described as "the big black cloud over the site."

The property is eligible for a variety of uses, such as apartments, offices or mixed use, but single-family homes won't be considered, Chandler planning administrator Jack Kurtz said.

Because the property is on the southern edge of the upscale Chandler Fashion Center, he expects a project there to complement the mall.

"At one time, the plans were for mixed use, which makes sense," Kurtz said. "The last people who came in, Archstone, were proposing high-density multifamily, which also made sense. Offices complementary to the mall would also make sense."

Colorado-based Archstone Apartments, which was in escrow when it broke the contract last fall, is expressing interest now that the title is clear.

Mayor Jay Tibshraeny is glad the legal case is resolved.

"The single-most question I get asked is what is happening with that partially completed structure near the mall," he said. "It's of keen interest."

City Councilman Rick Heumann said a Class A hotel would work well there because Chandler lacks a large meeting space. Condos are out because financing has dried up.

"The quality and standards of Chandler have to be met," Heumann said. "Elevation Chandler is going to be the entrance to the Price Corridor and the mall, and that's important."

At issue was who really owned the site. The legal battle began June 15, 2009, the day of a botched trustee's sale.

The Supreme Court said deeds of trust are governed by state statute, not case law, as Peltier had argued, said Roger Cohen, attorney for TD Service, the company that held not one but three trustee's sales on the property.

Joseph Cotterman, attorney for Point Center, said of the court's opinion, "I was very glad to see a well-reasoned decision that reached the right result for all the right reasons. It is very clear that the Supreme Court decided this strictly under the statutes that relate to deeds of trust."

The first trustee's sale was at noon on June 15, 2009, when an auctioneer for TD Service made a \$1 million credit bid on behalf of Point Center. The auctioneer had been authorized to make bids for Point Center up to \$25 million if competitors placed bids. Point Center was deemed the buyer.

Peltier arrived later and told the auctioneer the sale had been scheduled at 2 p.m., and he insisted the auction be repeated, so a second sale occurred about 3:30 p.m.

The auctioneer bid \$1 million for Point Center, and Peltier bid a dollar more: \$1,000,001. The auctioneer called his office and was erroneously told to declare Peltier the winner, even though Point Center had authorized the auctioneer to bid up to \$25 million on the lender's behalf.

The next day, a standoff developed between Peltier and TD Service. The company said the sale was void because of errors, and it refused to accept the balance from Peltier, who in turn refused to accept from TD his \$10,000 down payment from the day before.

The errors in the sale included inaccuracy in the property's legal description and in sale notices being placed at the wrong address.

Peltier, doing business as BT Capital, filed a lawsuit, which was dismissed by Maricopa County Superior Court Judge Bethany Hicks.

She ruled that the second trustee's sale was void because of procedural irregularities.

Peltier appealed, and the Arizona Court of Appeals kept his case alive.

However, the state Supreme Court said Friday that one of the keys was a third trustee's sale, held on July 1, 2010.

"We hold that this case was rendered moot when the property was purchased by the beneficiary (Point Center) at a third trustee's sale in 2010," the opinion said.

Peltier attended the July 2010 sale but didn't bid, saying he already owned the property.

The Supreme Court also ordered Peltier to pay attorney's fees incurred by Point Center.

Peltier's attorney, Bill Doyle, declined to comment.

Construction on Elevation Chandler stopped April 2006, leaving an eyesore, a partly built hotel jutting into the sky. Jeff Cline, Elevation Chandler's original developer, filed for bankruptcy protection in April 2008.

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<http://www.azcentral.com/arizonarepublic/business/articles/2012/05/10/20120510property-near-mall-finally-has-owner.html#ixzz1uZpD1LhW>