



Fund challenges Swig creditors over \$4M judgment

By [Adam Pincus](#) | January 15, 2010 05:19PM



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A fund that won a \$3.9 million judgment in September against embattled developer Kent Swig is seeking to enforce its priority claim on certain of Swig's assets, and prevent competing creditors who are owed a total of nearly \$50 million from getting to them first.

The fund, affiliated with Midtown-based investment firm RCG Longview, sued Swig as an individual, as well as five of his creditors, to force a turnover of eight assets to repay a \$3.9 million debt, a petition filed Jan. 7 in New York State Supreme Court says. In the same filing, the fund alternately asked the court to turn the assets over to a sheriff or put them in the hands of a receiver.

But a main goal of the suit was to make sure the other five creditors did not get their hands on the assets before the fund named RCG LV Debt IV Non-REIT Asset Holdings, did.

The attached chart includes lenders and other creditors who have won court judgments against him.

"RCG has an interest in insuring that any property held or received by Swig pursuant to his interests in the companies is not diverted for payment of his other creditors," the court papers say.

A restructuring attorney for Swig, Y. David Scharf, a partner at law firm Morrison Cohen, downplayed the legal maneuverings.

"These court filings are simply Mr. Swig's creditors jockeying for position amongst themselves as we try to work out a global restructuring with all of them," Scharf said in an e-mail.

As real estate investors default on loans, lenders including RCG Longview and Citibank are throwing legal elbows to best position themselves to get their money back.

RCG Longview lent Swig \$3.5 million in January 2008, and to secure the loan it filed a public document giving the firm a priority claim in eight property holding companies, the RCG papers say. Swig defaulted on the loan in February and in September, RCG won the \$3.9 million judgment.

RCG Longview did not immediately respond to a request for comment.

The RCG Longview filing was a classic move by a creditor to stake its claim to an asset to fend off other creditors, said Fred Stevens, an expert in bankruptcy and partner at law firm Fox Rothschild. He is not involved in the proceedings.

RCG is suing "because it is apparently very concerned that the other creditors may get a hold of property that it believes it has superior rights to," Stevens said in an e-mail.

Swig is the highest-profile developer to be hit with multiple creditor judgments against him, a review of court records shows. A court filing in a separate suit against Swig said as of April 2009 that he had \$800 million in assets, but experts believe that number has declined substantially with the fall in the real estate market.

RCG says in its suit that it holds top rights to Swig's interests in 406 East 63rd Street, 401 East 89th Street, 48 Wall Street, 140 William Street, 5 Hanover Square and 212 Eighth Avenue, court papers show.

Other creditors have won judgments from Swig totaling nearly \$50 million over the past six months including Square Mile Capital for \$32.4 million, have also not been paid and are trying to gain control of his assets as well.

Citibank, in a separate court action, sued in November for control of Swig's ownership interest in 212 Eighth Avenue in Chelsea, a property RCG claims it has a priority interest in.

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