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A lawyer discusses what you need to know about stalled projects and their potential opportunities

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We all know that the construction industry has been a little "slow" lately, to say the least. As different real estate clients have called me for advice and to discuss what they are doing to breathe some life into their businesses, I have noticed that a new term has emerged, i.e,. "stalled projects." I like that term. Some might even say this is a euphemism. It is not just that the developer is unable to make his payments to his lender, is in default and is about to be foreclosed on - the project is "stalled." This is a term for the endless optimist. The project may have run aground, be gathering dust and have a mountain of unpaid bills, mechanic's liens and other problems, but somehow, someway it is going to turn around. And maybe it will.

So what seems like projects with insurmountable problems have turned into opportunities for the right people. Some industrious people have seen sites with foundations and no crews working and have done some research to find out why the project has stalled and what they may be able to do to get it back on track. Some banks are willing to start dialogues with these opportunistic buyers and others want to wait until the foreclosure has been completed.

Some savvy investors with cash have teamed up with contractors to help them identify these opportunities. Think about it. Who has the best handle on how to control those costs? Contractors. What is "in it" for the contractor is open to negotiation. Sometimes there is the possibility of a joint venture. Other times it is a piece of the equity. Sometimes the contractors just want to be the construction managers on the projects and other times contractors just want to be contractors.

As an attorney who works in this area, I always counsel people to be very cautious. There are a lot of mine fields for the unwary to fall into. Would-be investors must spend some time getting to know their "would be" partners and once they do, on having the right agreements with them. For those who are too hasty to move forward, it can be like the couple that winds up in Vegas married.

Some of the joint venture agreements I have seen appear to be sketchy. One developer who had a stalled project was offering a contractor the opportunity to basically have half of his debt, in exchange for the contractor paying real money for the privilege. This was separate and apart from the fact that a lender had a security interest in this project and would not have agreed to this change in ownership to begin with. The developer did not want to show his cards and share important information about the project.

Warning lights should have been going off. This was just a desperate developer looking for some quick cash before the bank stepped in and just took over the project. If the contractor had been gullible and been able to "buy into" that, all he would have done is take on a lot of someone else's debt and liability and his cash would have been spent by the developer on something other than completing the project.

Investors cannot just assume that developers on these projects own the architect's plans. Many developers are very sloppy with formalities, have not had legal counsel very involved in the process and do not have signed contracts with architects or have signed contracts, but do not own the drawings. When this was pointed out to an investor in a recent deal, he angrily shot back "Well I always own the plans to all of my projects."

The morale is that anyone interested in pursuing these kinds of opportunities should seek legal counsel knowledgeable in this area.

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