Important Decision Regarding Availability of Specific Performance of Loan Agreements

In *Destiny USA Holdings, LLC v. Citigroup Global Markets Realty Corp*., a New York appellate court upheld, by a 3-2 margin, the lower court's grant of a preliminary injunction for specific performance under a construction loan agreement. The lower court had ordered the lender to honor borrowing requests under its loan agreement for the first phase of the Destiny USA development in Syracuse, NY. The lender appealed the decision primarily on the basis of the general rule that specific performance of a contract is unavailable because the borrower presumably can obtain alternate financing and thus monetary damages are a sufficient remedy. The appellate court acknowledged this general rule, but concluded that an exception was warranted due to the difficulty of calculating monetary damages in this case. Citing precedents requiring specific performance of mortgage loans, the court ruled that the project's "unprecedented nature and scope" made it unique and thus without readily calculable market value. The court also held that the potential damage to the developer's reputation arising out of the project's failure made calculating damages impractical. The dissenters took issue with the majority's conclusion that the case justified an exception to the general rule that monetary damages are the proper remedy, noting the absence of any precedent for granting a preliminary injunction in this context, as well as the fact that the borrower had not made any attempt to obtain replacement financing. The lender is expected to appeal the decision to the Court of Appeals in what is likely to be a closely followed case.

If you would like a copy of this decision or have any questions regarding the potential impact on specific transactions, feel free to contact any of the following Ropes & Gray attorneys:

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