

AV builder defaults \$30 million, files lawsuit

Eliopulos family: Lender put sensitive data up on Internet

*This story appeared in the Antelope Valley Press
Wednesday, August 6, 2008.*

By JAMES RUFUS KOREN
Valley Press Staff Writer

PALMDALE - Antelope Valley developer Andrew J. Eliopulos and the construction company his father founded defaulted on multimillion-dollar development loans earlier this year and are being sued by IndyMac Bank, a troubled lender that was seized by federal regulators in July, court records show.

Pasadena-based IndyMac filed a lawsuit in April, calling for J.P. Eliopulos Enterprises Inc., Andrew Eliopulos and his mother, Georgia Eliopulos, to pay back nearly \$30 million in outstanding debt.

The Eliopulos family and company answered in May with a countersuit, alleging that, among other things, IndyMac made false accusations about an Eliopulos development and disclosed their personal information - including Social Security and bank account numbers and tax returns - on the Internet.

Neither Andrew Eliopulos, chief executive of J.P. Eliopulos Enterprises, nor attorneys representing the family returned phone calls seeking comment about the litigation. Following multiple attempts to reach the builder for comment, staff at Eliopulos' Lancaster office said he was the only company representative authorized to speak to a reporter. No one would or could provide information about where the builder was.

Kent Goss, an attorney representing IndyMac in the suit, said the bank is not commenting on any active litigation.

J.P. Eliopulos Enterprises, founded in 1957 by Antelope Valley pioneer John Petro Eliopulos, has built more than a dozen housing tracts containing more than 800 homes, as well as commercial developments, since the mid-1980s.

John P. Eliopulos' name adorns a pavilion at the Antelope Valley Fairgrounds, a theater at the Lancaster Performing Arts Center and the John P. Eliopulos Hellenic Center in Lancaster.

Andrew Eliopulos became president and chief executive officer of the company after his father's death in 1999.

Joshua Ranch Development, a subsidiary of J.P. Eliopulos Enterprises, borrowed \$36.6 million from IndyMac in December 2005 to buy 794 acres of land near 40th Street West and Elizabeth Lake Road in Palmdale - a site where Eliopulos, through Joshua Ranch Development, planned to build more than 500 homes, according to court documents.

Joshua Ranch took out a \$14.5 million loan in January 2007 for the construction of 20 homes and three model homes. While both the 2005 and 2007 loans were borrowed by Joshua Ranch Development, the loans were guaranteed by Eliopulos, his mother and J.P. Eliopulos Enterprises Inc.

"The guarantor absolutely and unconditionally guarantees the punctual and complete payment" of the Joshua Ranch loans, according to two guarantee statements signed by Eliopulos and his mother.

The larger loan was due to be paid back in full no later than Jan. 1, 2008 - a six-month extension from the original July 2007 due date - but the loan was not paid back, according to IndyMac's lawsuit.

An IndyMac attorney sent a letter to Joshua Ranch Development on Jan. 10 saying the loan was in default as of Jan. 2.

IndyMac Bank began as Countrywide Mortgage Investment, started in 1985 by David Loeb and Angelo Mozilo as a banking organization that could provide collateral on Countrywide Financial loans too big to be sold to Freddie Mac and Fannie Mae, the federally chartered but investor-owned mortgage enterprises that recently needed to be shored up by Congress and that handle an enormous portion of the nation's mortgage business.

Countrywide spun off IndyMac in 1997 as an independent company. It was Mozilo, who stepped down as chairman of Countrywide on July 1, 2008, who moved to open a call center campus of Countrywide in Lancaster in 2001, immediately becoming one of the area's major employers.

IndyMac attorneys sent another letter on Feb. 26, this time calling for Joshua Ranch and the Eliopulos family to pay the outstanding loan balance.

"Lender hereby makes demand upon borrower for immediate payment to lender of all amounts," according to a letter to Andrew and Georgia Eliopulos and J.P. Eliopulos Enterprises Inc.

IndyMac is suing for the outstanding loan balance as well as interest and late fees, totaling \$29.8 million.

According to the Eliopulos' countersuit, as the housing and subprime lending markets began to collapse, IndyMac accused Joshua Ranch Development and Eliopulos Enterprises of "inappropriate use of ... loan funds" and ordered an audit.

"The audit conducted by IndyMac caused significant delays in the Joshua Ranch Project," according to the suit. "Ultimately the audit delayed the Joshua Ranch project for more than two months. The audit also delayed IndyMac's consideration of a new loan request by Joshua Ranch Development."

The audit found no evidence of wrongdoing, according to the Eliopulos' countersuit.

Following the audit, IndyMac ordered an appraisal of the Joshua Ranch Project. The appraisal showed the project had a value of \$17 million, while an earlier appraisal had given the project a value of \$82 million. After the reappraisal, IndyMac denied the new loan Joshua Ranch had requested.

The Eliopulos' suit accuses IndyMac of demanding the audit and appraisal as a subterfuge.

"The true reason that IndyMac demanded (an) audit and a new appraisal is that, in light of the subprime debacle, IndyMac had decided to discontinue making construction loans," the Eliopulos' suit says. "But rather than openly and honestly disclose this fact ... IndyMac fabricated excuses that caused substantial delays in the project."

Those excuses, the Eliopulos suit alleges, "constituted a breach of the implied covenant of good faith and fair dealing" into which the parties had earlier entered.

In a recent Wall Street Journal article, Eliopulos contended that the audit was used by a collapsing bank as a means to get out of its loan agreements.

The bulk of the suit against IndyMac, though, involves the bank's alleged release of Andrew and Georgia Eliopulos' personal information - Social Security and bank account numbers - on the Internet.

According to the countersuit, IndyMac began trying to sell some of its loans, including the Joshua Ranch loans, to other lenders or investors in March. In the process of advertising the loans for sale, IndyMac and Eastdil Secured LLC, a co-defendant in the suit against IndyMac, posted Georgia and Andrew Eliopulos' tax returns online.

The tax returns contained Social Security numbers of five members of the Eliopulos family.

Citing liquidity concerns, IndyMac Bank was placed into conservatorship by the FDIC on July 11, 2008.

The FDIC oversaw creation of a bridge bank, IndyMac Federal Bank FSB, to take control of IndyMac Bank's assets and secured liabilities deposit accounts insured up to \$100,000.

According to LA Biz Observed, IndyMac's principal enterprise was the making of so-called Alt A loans. These loans, also called Alternative documentation loans, often are

made to borrowers who have less than perfect credit and sometimes no steady income or requirement to verify income. Many such exotic loans contributed to the meltdown of the mortgage, real estate and building industries.

The IndyMac bridge bank was put into conservatorship under the control of the FDIC, and it was not immediately known what effect, if any, that might have on the Eliopoulos litigation and the countersuit by Eliopoulos.

With \$32 billion in assets, IndyMac Bank is one of the largest bank failures in American history, after the 1984 failure of Continental Illinois National Bank, with \$40 billion of assets, and the 1988 failure of American Savings & Loan Association of Stockton, due to large losses in mortgage-backed securities.

jkoren@avpress.com