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## **GARY M. TENZER; BA, MBA, MSBA**

### **SUMMARY**

Gary M. Tenzer, founder of Tenzer Consulting Group and Co-Founding Principal and Senior Managing Director of George Smith Partners, Inc. ("GSP"), is a commercial real estate finance professional and expert witness. As an expert witness for more than 35 years, Mr. Tenzer has served as a litigation consultant and expert witness in various real estate litigation cases, including issues related to real estate financing and transactions, entity structure, real estate bankruptcy, and mortgage brokerage matters.

Mr. Tenzer's expertise stems from 45 years of experience in the commercial real estate finance industry. He co-founded GSP, a Los Angeles-based firm that provides real estate investment banking, financing, and consulting services, specializing in the placement of commercial real estate debt, equity, and structured financing nationwide. GSP is a recognized commercial real estate capital markets advisory firm that annually advises on the placement of \$3 to \$4 billion of commercial real estate capital on projects throughout the United States. The firm's total financings have exceeded \$58 billion since the formation of George Smith Financial Services (GSP's predecessor company) in 1979. GSP places financing with over 1,500 lenders and equity investors.

At GSP, Mr. Tenzer has been personally involved in arranging over \$12 billion in financing for developer and investor clients, which include construction loans, permanent debt, mezzanine debt, as well as preferred and joint venture equity. The properties financed include residential, multifamily, retail, office, commercial, industrial, mixed use, congregate care, hospitality, land development, large-scale community development, and special purpose properties, with debt and equity financing reaching up to \$250 million in capitalization. Sources of financing have included Wall Street securitized lenders (CMBS), state and federally chartered commercial banks, insurance companies, hedge funds, savings and loans, pension funds, debt funds, private REITs, credit companies, opportunity funds, domestic and offshore equity funds, Fannie Mae, Freddie Mac, FHA/HUD, among others.

### **LITIGATION CONSULTANT/ EXPERT WITNESS EXPERIENCE**

Mr. Tenzer has extensive experience as an expert witness, having served as a litigation consultant and/or expert witness in over 350 cases, and provided deposition and trial testimony over 100 times in Federal, State, and Bankruptcy courts as well as at ADR proceedings. For more than 35 years, Mr. Tenzer has offered expert opinions in various types of cases, involving bankruptcy interest rate determination, damage analysis, capital structure, standards and practices of real estate lending, bankruptcy plans of reorganization, real estate financings, disputes between public and private entities, intercreditor disputes, property valuation, project feasibility, lending policy and loan approval issues, partnership disputes, loan restructuring standards of care and best practices, and "alter-ego" issues related to the corporate structure of commercial real estate investment and development companies as well as other commercial real estate transactional and finance issues.

Mr. Tenzer is proficient in providing testimony in both jury and bench trials, as well as through depositions and declarations. He is particularly skilled in translating complex and sophisticated financing concepts into understandable and clear terms for both the Court and jurors. In addition to his ability to deliver oral testimony and prepare written

reports and declarations, Mr. Tenzer has extensive experience in generating cash flow projections, conducting discounted cash flow analyses, internal rate of return evaluations, and other financial analysis methodologies. Furthermore, his aptitude for effective presentation, combined with his computer skills, has enabled him to aid attorneys by creating graphs, ownership diagrams, timelines, flow charts, and various other demonstrative exhibits for trials.

Mr. Tenzer's clients include major institutional investors, investment banks, financial institutions, and numerous top-tier law firms throughout the country. Listed below are a sample of his clients and the law firms that he has previously served.

### **Representative Clients**

- Amazon.com
- AMRESKO
- AMTAX Holdings
- Argentic
- Bank of America
- Brookdale Senior Living
- California Attorney General
- Carlsberg Management
- Carmel Partners
- Cathay Bank
- City National Bank
- Commonwealth Land Title
- Dollar Tree Stores
- Donald Sterling Properties
- Equitable Life Insurance Company
- Franklin Life Insurance Company
- Fuji Bank, Ltd.
- Fujita USA Corp.
- G.H. Palmer Associates
- General Electric Real Estate
- General Growth Properties (GGP)
- Glaziers Pension Trust of Southern California
- Hard Rock Hotel and Condo /Peter Morton
- Heitman Financial Corporation
- Herbalife (Estate of Mark Hughes)
- Hyatt Corporation
- Internal Revenue Service
- J.E. Robert Company
- J.P. Morgan & Company
- K. Hovnanian Corporation
- Kennedy Wilson, Inc.
- Kern County Public Emp. Retirement System
- Lennar California Partners / LNR
- Los Angeles Unified School District
- Mack Real Estate Groups
- Madame Tussauds
- Manatt, Phelps, Phillips, LLP
- Markley Stearns, LLC
- Midland Mortgage Corp
- Mitsubishi, Ltd. – Bank of Tokyo
- MJW Investments
- Operating Engineers Pension Trust
- Poag Development Group
- Regents of the University of California
- Rialto Capital Management (LNR)
- RW Selby
- Simon Property Group
- Southern California Edison
- Spear Street Capital
- State Bar of California
- Sumitomo Trust and Banking Co., Ltd.
- Triple Five Corporation
- UBS (Union Bank of Switzerland, AG)
- US Bancorp
- Valley National Bank
- Venable
- Wells Fargo Bank

## **Representative Law Firms**

- Allen Matkins
- Ballard Spahr
- Barnes & Thornburg
- Best, Best & Kreiger, LLP
- Bird, Marella, Boxer, Wolpert & Matz
- Boudreau, Albert & Wohlfeil, LLP
- Brobeck
- Buchalter
- Cadwallader
- Cox, Castle & Nicholson
- Cozen O'Connor
- Davis Wright Tremaine
- De Castro, West
- Elkins Kalt
- Fabian VanCott
- Fox Rothschild
- Fulbright & Jaworski
- Gibson Dunn
- Glaser Weil
- Greenberg Glusker
- Greenspon Marder
- Haight, Brown & Bonesteel
- Irell & Manella
- Jenner & Block
- Kaye Scholler
- Kirkland
- Latham
- Liner Law
- Loeb & Loeb
- Manatt Phelps
- Mitchell Silberberg
- Morgan Lewis
- Munger Tolles
- O'Melveny
- Pachulski Stang
- Paul Hastings
- Perkins Coie
- Pillsbury
- Pircher Nichols
- Seyfarth Shaw
- Sheppard Mullin
- Sidley
- Skaddan Arps
- Snell & Wilmer
- Sonnenschein
- Strock
- Stutman Treister
- Susman Godfrey
- Thompson Colburn
- Tuttle & Taylor
- Venable
- Weil Gotshal
- Wynne, Spiegel

Examples of the various types of matters on which Mr. Tenzer has worked are categorized and listed below.

## **Representative Financing Matters**

- Retained by Amazon as a commercial real estate expert witness in a RICO litigation against former employees who were accused of taking kickbacks from an industrial developer of four major company-owned data centers.
- Retained by Defendant, Hard Rock Condominiums, which was sued by its investors when Hardrock canceled a \$1.4 billion condominium development in Las Vegas, NV. The matter required Mr. Tenzer's analysis of the suitability and the determination of market terms of a \$1.25 billion construction loan commitment.
- Retained by Spear Street Capital, a mezzanine lender who was sued by its mezzanine borrower after it foreclosed on the mezzanine loan. The foreclosure resulted in a default on a senior construction loan, prompting the construction lender to draw on the Sponsor's letter of credit that had been pledged as additional

collateral. Issues addressed included the standards and practices of mezzanine lending and the expectations that a mezzanine lender would reasonably have of the borrower when entering into a financing transaction.

- Retained by Carmel Partners, a mortgage REIT, which acquired a \$110 million defaulted note through an auction and then foreclosed on the underlying collateral, a high-rise multifamily property in San Francisco. The REIT was sued by the borrower seeking a rescission of the foreclosure by alleging that the foreclosure was improper. Issues addressed included an analysis of the lending market for replacement financing, the efforts used in an attempt to secure replacement financing as well as a rebuttal to opposing expert's hypothetical financing structure which was unsupportable.
- Retained by the Simon Property Group, one of the nation's largest publicly owned, regional mall developers, in litigation against its insurance carriers in a \$200 million dispute over coverage limits after a regional mall was significantly damaged by a flood. Focus of testimony pertained to financing issues and mitigation efforts by the developer to restore the mall to full operations as well as opining upon the bank's process in its approval of a restructured loan.
- Retained by a construction lender, Valley National Bank, (the successor to Bank Leumi US) to defend against litigation from a mezzanine lender which alleged that the bank had fraudulently withheld information about construction defects in a failed high-rise condominium in New York City. Testimony was provided, amongst other issues, about the industry standard usage of intercreditor agreements as well as the insufficiency of the plaintiff's due diligence prior to funding the mezzanine loan.
- Retained by the Southern California Municipal Water District to give opinions about the financeability of a proposed shopping center when its development was delayed due to pipeline construction in an inverse condemnation action. The testimony was prepared to challenge the Plaintiff's claim that the development of the center was feasible and could have gone ahead irrespective of the pipeline construction.
- Engaged by Simon Property Group, one of the nation's largest publicly owned, regional mall developers, which was in litigation against its co-developer partner concerning financing issues related to the development of a third phase of the "Forum Shops" at Cesar's Palace, in Las Vegas, Nevada. The testimony concentrated on the financing structure of the prior two phases, the evolution of financing methodologies over time, and the economic imprudence of the Plaintiff's proposed alternative financing plans.
- Engaged by the State of California as a financing expert in a case where the State was sued by its landlord for allegedly interfering with their efforts to secure financing for a building in which the State was a tenant.
- Retained by Lennar Corporation, the largest homebuilder in the United States, in which Lennar was sued by a joint venture partner alleging misallocation of profits. Expert testimony was provided regarding the measures Lennar had undertaken to obtain financing for the specified development.
- Engaged by the Defendant, the Southern California Glaziers trade union pension fund, concerning claims made by a developer that the pension fund had committed to providing both debt and equity financing for the development of an outlet mall on a former hazardous waste site.
- Retained by partners of Markley Sterns, an international developer of telecom hotels. One partner alleged that the Defendant was involved in conflicts of interest between the Defendant partners and private investors. The testimony focused on loan terms arranged for development versus those available in commercial lending markets.

- Engaged by the Defendant to provide expert opinions on the feasibility and financial viability of a proposed \$110 million office project. The analysis addressed the market acceptability of the proposed bond lease, as well as the available financing terms for equity, construction debt, and permanent debt at the time of the project's development.
- Retained by the co-owner and anchor tenant of a 300,000 Sq Ft office building to provide expert opinions at an arbitration. The issues pertained to calculating the imputed equity of ownership and funding renovation costs through secondary financing. The analysis considered these factors in the current commercial real estate finance market.
- Retained by the Union Bank of Switzerland (UBS), an offshore bank, in a lawsuit filed by a former client who had pleaded guilty to felony tax fraud. The plaintiff argued that the bank had influenced him into engaging in fraudulent transactions, which resulted in his inability to secure loans on his portfolio of commercial properties due to his status as a convicted felon, causing significant financial harm. Testimony was provided to counter the plaintiff's claim that he was not financeable because of his felony conviction.

### **Representative Development and Alter-Ego Matters**

- Retained by Plaintiff, a national retailer, to assess a developer's liquidity in relation to a personal guaranty provided to a commercial bank for the acquisition and repositioning of a shopping center. The bank had ceased funding for its construction advances due to the developer's inability to rebalance the loan raising alter-ego concerns related to the developer's insufficient capital and the merging of business entities.
- Retained by Defendant, Poag Development Group, a corporate developer of regional lifestyle shopping centers, after it had received a judgement against it in state court for breach of contract with another developer. The Plaintiff instituted a separate action in federal court, aiming to pierce the Defendant's corporate veil and seek personal damages. Opinions were provided regarding alter-ego issues created by the developer's corporate structure and capitalization.
- Engaged by the developer of a western ski resort in a dispute with a hedge fund which had acquired the development loan from the originating bank and after foreclosing on the real estate, sued for a deficiency under the personal guaranty provisions alleging alter ego liability. The opinions offered specifically clarified that the corporate structure of a typical development company does not inherently create alter ego liability for the sponsor.
- Retained by the Plaintiff in a RICO action regarding the required equity dilution caused by the general partner's failure to contribute additional equity for the development of an apartment building.

### **Representative Breach of Contract and Damages and Standards of Care Matters**

- Retained by Plaintiff as a financing expert in its \$2.1 billion lawsuit against the State of California concerning the damages caused by the State's default on the sale of eleven state-owned office buildings when it cancelled the escrow.
- Retained by Fujita, a Japanese real estate investment and development company, to quantify damages caused by a former corporate officer who issued loans to himself from corporate credit lines at below-market interest rates. Testimony was provided to compare the due diligence and underwriting procedures performed at the time of the loans with the standards in the commercial lending industry.
- Engaged by the Defendant to provide expert opinions on the financeability and feasibility of a proposed medical office building. Provided insights on procedural matters related to the lender's loan approval process. Litigation support responsibilities included coordinating activities with the appraisal and other financial experts to determine the value and calculate potential damages, as well as prepare trial exhibits, and other

tasks.

- Plaintiff brought a lawsuit against the City of Santa Monica for failure to use good faith in resolving property boundaries on a ground lease premises located on the famed Santa Monica Pier. Testimony focused on the determination of economic damages caused by the delay as well as potential financing structures.
- Engaged by Plaintiff to testify about the financial impact caused by the loss of financing opportunities due to a general contractor's two-year delay in completing an anchored retail property in Southern California.
- Retained by Defendant, a real estate attorney, in a malpractice case to render expert opinions on the damages arising from the loss of a major Southern California multiplex cinema property through foreclosure when the financing, which was allegedly arranged by the attorney, did not close.
- Retained by Venable law firm when it was sued for malpractice for allegedly giving bad advice on a real estate financing transaction to a former client. Testimony addressed issues of standard of care and what type of advice a real estate developer should reasonably expect from his counsel.
- Engaged by the Plaintiff to provide expert testimony on the standards of care required of a mortgage broker who was in a legal dispute with a former client.

### **Representative Bankruptcy Matters**

- Mr. Tenzer was retained by General Growth Properties (GGP), the world's largest regional mall company, as a real estate finance expert in their \$20 billion Chapter 11 bankruptcy. This required his expertise in interest rate determination and "separateness" covenants related to CMBS financing.
- Engaged by the Creditor, Rialto, a "special servicer" in a bankruptcy of an office building in Portland, Oregon as an interest rate and feasibility expert to defeat the debtor's cram-down plan which would have converted the building into office condominiums.
- Retained by an offshore Debtor in a bankruptcy of a Holiday Inn in New York's financial district. Testimony was provided about the market rate of interest and plan feasibility in a new value plan of reorganization.
- Engaged by Creditor, a large credit company, to provide interest rate analysis and expert opinions related to the bankruptcy of a mixed-use apartment and office property in Pasadena, California.
- Engaged by Creditor's counsel to evaluate the Debtor's reorganization plan for an office building. Testimony was provided through written declaration in U.S. Bankruptcy Court, which ordered a relief from automatic stay enabling the Creditor's foreclosure to proceed.
- Engaged by Debtor's counsel to provide expert opinions on the market rate of interest for a restructured first mortgage on a 114,000 Sq Ft anchored shopping center in Thousand Oaks, California.
- Engaged by the Debtor to provide expert opinions and prepare a declaration concerning the market interest rate that a lender should charge for a first mortgage on a fully leased industrial property in Brea, California.
- Engaged by counsel for a multifamily developer who filed Chapter 11 to safeguard the equity of a 500+ unit project when a vulture fund acquired an offshore bank's credit enhancement on tax-exempt bonds and proceeded to foreclose on the bonds. Testimony included assessments on the suitable rate of interest on restructured debt in a cram-down plan of reorganization.

**Representative Real Estate Advisory Matters:**

- Retained by counsel to advise his client, MicroPort, a Chinese medical equipment manufacturing company, which was in contract to acquire an office building in Southern California subject to CMBS financing. Expert advice was provided regarding defeasing the debt, which would impose a substantial prepayment penalty vs negotiating with the master servicer to allow the loan's assumption.
- Retained by the State Bar of California to advise the Bar's trustees whether they should accept a purchase offer for the State Bar's home office building in San Francisco. The opinion involved the analysis of the office market as well as the cash flow effects of continued ownership.
- Retained by the Operating Engineers of Southern California, a \$2 billion Taft Hartley pension fund, as its mortgage advisor on real estate development loans that they provide to developers. Recommendations were made regarding future financing and the restructuring of over \$80 million in outstanding underperforming development financings as well as evaluating and advising on the sale of REO assets taken back in foreclosure.

**DIRECTORSHIPS****Former Director, NYSE listed Real Estate Development Company**

- NYSE listed developer of large-scale retirement communities. Mr. Tenzer served as a member of the Finance, Stock Option and M.I.S. Committees. Additional responsibilities included acting as the supervising real estate broker for all new home sales in the company's Southern California and Los Angeles divisions.

**Former Director, Federally Chartered Bank**

- As a director of the bank, Mr. Tenzer served on both the bank's loan and credit policy committees. He was responsible for helping shape the bank's real estate lending policies as well as acting as the resident real estate expert on the loan committee. The bank made construction loans on residential, commercial, and mixed-use properties both on a covered and uncovered basis. Mr. Tenzer was also involved in the formation and management of the bank's mortgage banking division.

**Member of Advisory Board, UCLA Ziman Center for Real Estate**

- The UCLA Ziman Center for Real Estate is a multidisciplinary Research Center of the UCLA Anderson School of Management and the UCLA School of Law. The Ziman Center advances thought leadership in the field of real estate by generating influential research, educating the next generation of leaders, and providing meaningful forums for industrial professionals and policy makers.

## EDUCATION

**University of Southern California, Los Angeles, CA**

***Master of Science in Business Administration (MSBA)*** 1979

- Major in Real Estate Finance, with specific focus on real estate finance, real estate economics, financial feasibility and rate of return analysis

**University of Southern California, Los Angeles, CA**

***Master of Business Administration (MBA)*** 1978

- Majors in Finance and Entrepreneurship & Venture Management, specific emphasis on capital structure and creation of startup enterprises in the real estate industry

**University of California, Berkeley, Berkeley, CA**

***Bachelor of Arts (BA)*** 1976

- Major in Economics, specific emphasis on Urban Land Economics and quantitative analysis; minors in Psychology and Astronomy.

## MEMBERSHIPS and LICENSES

- **California Real Estate Broker's License**, *member, in good standing* (since 1978)
- **Jewish Federation of Los Angeles**, *Real Estate Cabinet*
- **City of Hope**, *National Leadership Council* (prior member)
- **Urban Land Institute**, *Transit Oriented Development Counsel* (prior member)

## PUBLICATIONS

- Day in Court: Litigation Returns in a Tough Economy; in *"Commercial Property News;"* November 2008
- Litigation: The New Real Estate Reality; in *"National Real Estate Investor;"* December 2008
- Are Bankruptcies Coming Soon? in *"Real Estate Southern California;"* February 2004
- FMRR: A Programmable Calculator Implementation; in *"The Real Estate Appraiser & Analyst;"* April 1979
- Various publications - miscellaneous articles, interviews, and byline articles

## SPEAKING and TEACHING ENGAGEMENTS

- Frequent panelist or moderator at commercial real estate conferences
- UCLA Anderson School of Management – guest lecturer in Real Estate and Real Estate Finance
- USC Marshall School of Business – guest lecturer in Real Estate and Real Estate Finance