

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
WCI COMMUNITIES, INC., *et al.*, .
 . Case No. 08-11643 (KJC)
 . (Jointly Administered)
 .
 . October 8, 2008
 . 2:30 p.m.
Debtors. . (Wilmington)
 .

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 THE CLERK: All rise. Be seated.

2 THE COURT: Good afternoon.

3 MR. SUTTY: Good afternoon, Your Honor. Eric Suttty
4 of Bayard on behalf of WCI Communities and its affiliated
5 Debtors. We submitted an amended agenda earlier today. I
6 don't know if Your Honor received a copy of it.

7 THE COURT: I have it.

8 MR. SUTTY: Orders have been entered with respect to
9 items no. 1 and 3 on the agenda. Leaving only item no. 2
10 for, for hearing today. Item no. 2 is the Debtors' motion
11 for entry of an order authorizing and approving a bulk sale
12 of 22 condominium units free and clear of all liens, claims,
13 encumbrances, and other interests, and for payment of a
14 broker commission and making the home sales order applicable
15 to this sale. I understand from communications with chambers
16 that you, Your Honor requested that a proffer be made with
17 respect to the good faith finding.

18 THE COURT: Yes.

19 MR. SUTTY: And we're prepared to do that. Our
20 witness is on the phone. His name is Alastair Brown
21 (phonetic). If I may proceed with the proffer?

22 THE COURT: Yes you may. I just, I'll just note for
23 the record that I normally would not permit testimony by
24 telephone. But in light of the lack of opposition here and
25 the unlikely event that there was going to be any, any

1 examination, I said okay. So on that basis, let's proceed.

2 MR. SUTTY: We thank you, Your Honor. Were Alastair
3 Brown called to testify, he would testify as follows. Mr.
4 Brown would testify that he is employed by and holds the
5 internal title of Vice President of Sales of WCI Communities.
6 Mr. Brown would testify that his duties and responsibilities
7 as Vice President of Sales include the following.

8 Negotiating with potential purchasers and real estate brokers
9 in connection with the sale of assets, reviewing purchase and
10 sale agreements, managing and maintaining the sale process,
11 developing sales strategies, and overseeing Sales Directors.

12 Mr. Brown would testify that he reports to the Senior Vice
13 President of Sales and Marketing, Mike Hertin (phonetic).

14 Mr. Brown would testify that prior to the August 4th, 2008 Bay
15 Colony agreed to sell 22 condominium units pursuant to the
16 terms of 22 separate but identical resident purchase
17 contracts and master addendum. Mr. Brown would testify that
18 he is familiar with the contents of the resident purchase
19 contracts and the master addendum. Mr. Brown would testify
20 that pursuant to the master addendum, the buyer is obligated
21 to purchase the units in their entirety. Mr. Brown would
22 testify that the 22 units are within building 6 of Palazzo 1.
23 Palazzo 1 is phase one of a three phase condominium project
24 located within the Pelican Reserve neighborhood in Fort
25 Meyers, Florida. When complete, Palazzo 1 will consist of

1 three separate buildings, buildings, 5, 6, and 7. Each of
2 which individually contains 22 condominium units. Upon
3 completion, the entire phase three Palazzo condominium
4 project will consist of ten 22 condominium unit buildings.
5 Building 6 is the first of the Palazzo buildings to receive a
6 certificate of occupancy. Mr. Brown would testify that the
7 units are the subject of the bulk sale motion, that the units
8 range between 1229 square feet to just under 1400 square
9 feet. Pursuant to the resident, residence purchase
10 contracts, the buyer has agreed to pay \$160 thousand per unit
11 for an aggregate total purchase price of \$3,520,000.
12 Additionally, prior to the petition date, the buyer paid
13 \$32 thousand as a good faith deposit for each unit, in the
14 aggregate totaling \$704 thousand. The deposits are currently
15 being held by the seller in an escrow account on, and are not
16 refundable to the buyer in the event the buyer defaults under
17 the resident purchase contracts. Mr. Brown would testify
18 that prior to August 4th, 2008, WCI retained the services of
19 Orsini Property Limited to market and sell the units in the
20 United Kingdom. Under the terms of the broker agreement,
21 Orsini is entitled to a broker commission in the amount of 5%
22 of the purchase price, payable in part upon entry into the
23 purchase agreements, with the remainder payable at the
24 closing of the sale. Prior to the petition date, \$86,115.59
25 was paid to Orsini on account of the broker commission.

1 Accordingly, \$86 thousand, \$86,115.59 remains unpaid. Mr.
2 Brown would further testify that the amount of the broker
3 commission reflects the existing market rate and is fair and
4 reasonable in the context of bulk sales in relation to the
5 value of the purchase price. Mr. Brown would testify that
6 pursuant to the residence purchase contracts, the buyer is
7 required to pay certain costs and expenses. Mr. Brown would
8 further testify that the seller has agreed to pay condominium
9 association assessments for one year for units 101, 102, and
10 103, which are the model units representative of the three
11 floor plans available. Mr. Brown would testify that the
12 private bulk sale is in the Debtors' sound business judgment
13 because the consummation of the sale will allow the Debtors
14 to sell a significant portion of their completed inventory at
15 a price higher than expected if sold in today's market or on
16 an individual basis, and generates significant cash for the
17 Debtors' estates. Mr. Brown would testify that the Debtors
18 have determined that conducting the sale in the manner
19 described in the motion has enabled them not only to obtain
20 the highest and best offer for the units in the current
21 market, but also to avoid the increased time and expense
22 attendant to a public sale. Mr. Brown would testify that the
23 terms of the private sale are fair and reasonable. Mr. Brown
24 would testify that he believes the private sale is in the
25 best interest of the estates and their creditors. Mr. Brown

1 would testify that the buyer and its affiliates are not
2 insiders of the Debtors and are not controlled by or acting
3 on behalf of any insider of the Debtors. Mr. Brown would
4 testify that the buyer has no connection to the Debtors or
5 the Debtors' employees outside of the purchase of the 22
6 units, which are the subject of the motion. Mr. Brown would
7 testify that the resident purchase contracts and master
8 addendum are the product of extensive good faith, arm's
9 length negotiations between the buyer and seller. Mr. Brown
10 would testify that since the Debtors and the buyer have
11 entered into the resident purchase contracts in December,
12 2007, the price of comparable individual condominium units in
13 the Fort Meyers area have declined significantly in terms of
14 both volume and average price. Presently comparably sized
15 condominium units are being marketed for approximately \$125
16 thousand in the Fort Meyers area, well below the current
17 price per unit of \$160 thousand under the purchase
18 agreements. Mr. Brown would testify that the aggregate
19 purchase price of \$3,520,000 for the units exceeds the
20 expected sales value per unit if sold individually, and
21 accordingly have concluded that the sale constitutes the best
22 offer that the Debtors can reasonably expect to receive in
23 the current market. Mr. Brown would testify that the buyer
24 has not discussed or entered into any agreements with the
25 Debtors or the Debtors' management, or its employees in

1 connection with compensation, future employment, or any other
2 arrangement separate and apart from the resident purchase
3 contracts and the master addendum. This would conclude Mr.
4 Brown's direct testimony. He is available for cross
5 examination. He is on the phone.

6 THE COURT: All right. Let me ask for the record
7 whether anyone would like to examine Mr. Brown? I hear no
8 response. And I have no questions other than for counsel.
9 And that is will the net proceeds be available to the estate,
10 or will they be used to pay off secured debt? What is
11 happening with the proceeds, do you know?

12 MR. SUTTY: Yes, I do. Under the DIP order that
13 Your Honor entered on September 23rd, 50% of the net sale
14 proceeds are to be paid to the administrative agents, with
15 the remainder to go to the estate.

16 THE COURT: All right. Thank you. Does anyone else
17 care to be heard in connection with this motion? I hear no
18 response. I'm satisfied that based on this record the Debtor
19 is entitled to the relief which it has requested, and I've
20 signed the order.

21 MR. SUTTY: Your Honor, I do have - - I'm not sure
22 if you signed the correct order. We did submit an order
23 under a certification of counsel which had a - -

24 THE COURT: Change to account for the broker's
25 affidavit.

1 MR. SUTTY: Correct.

2 THE COURT: Yes. That's the order I signed.

3 MR. SUTTY: It was filed this morning.

4 THE COURT: And I've also since read the affidavit
5 which has been filed.

6 MR. SUTTY: I would like, Your Honor, to make one
7 further finding on the record. Is that the sale was done in
8 good faith. It's not expressly provided in the order. I
9 just wanted to have that on the record.

10 THE COURT: I think it said buyer would be entitled
11 to 363 protections, which I - -

12 MR. SUTTY: Okay.

13 THE COURT: - - I believe is the same thing, but as
14 long as you're here, and for your comfort, I do conclude that
15 Debtor has met that burden.

16 MR. SUTTY: Thank you, Your Honor.

17 THE COURT: All right. I do have one other question
18 for you counsel, if you can answer it. I did sign the order
19 on matter 3, the - - well, Committee counsel I guess. The
20 Committee's application to employ an information agent. I
21 note that, for the record that the terms of the engagement
22 provide that there is a cap on liability. Normally, with
23 respect to those hired in connection with services to be
24 provided, either the US Trustee objects or I might mention
25 something. I did not have a problem with that, given the

1 limited role that was being served by this applicant. And
2 I'm assuming that's why the US Trustee didn't weigh in on the
3 matter as well.

4 MR. SUTTY: I'll yield the podium to Committee
5 counsel.

6 THE COURT: All right.

7 MS. DAVIS JONES: Thank you, Your Honor. For the
8 record, Laura Davis Jones, Pachulski, Stang, Ziehl & Jones.
9 Your Honor, that was my assumption as well, given their
10 limited role.

11 THE COURT: Okay. Thank you.

12 MS. DAVIS JONES: Thank you.

13 THE COURT: And I do have one further question. And
14 I know I didn't ask that you be prepared to address this
15 ahead of time, but I was just curious about how the parties
16 are doing on the Debtors' order concerning the maintenance of
17 insurance policies and surety bonds.

18 MR. SUTTY: Your Honor, I do not have an updated
19 status with respect to that matter.

20 THE COURT: Okay. I know we've set it for a hearing
21 date in the not too distant future, and I didn't mean to put
22 you on the spot, counsel, but I was just curious.

23 MR. SUTTY: Thank you.

24 THE COURT: All right. Thank you. Anything further
25 for today?

1 MR. SUTTY: No.

2 THE COURT: All right. Thank you. That concludes
3 this hearing. Court is adjourned.

4 (Whereupon at 2:42 p.m. the hearing in this matter was
5 concluded for this date.)

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18 I, Jennifer Ryan Enslin, approved transcriber for
19 the United States Courts, certify that the foregoing is a
20 correct transcript from the electronic sound recording of the
21 proceedings in the above entitled matter.

22

23 /s/Jennifer Ryan Enslin
24 Jennifer Ryan Enslin
25 43 Bay Boulevard
Newark, DE 19702
(302) 836-1905

10/12/08

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

WCI Communities, Inc.
24301 Walden Center Drive
Bonita Springs, FL 34134

Chapter: 11

EIN: 59-2857021
Florida Design Communities, Inc.
Watermark Communities, Inc.

Case No.: 08-11643-KJC

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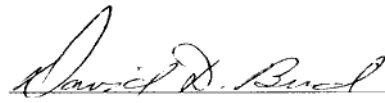
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db	WCI Communities, Inc.	24301 Walden Center Drive	Bonita Springs, FL 34134
aty	Eric Michael Suttty	Bayard, P.A.	222 Delaware Avenue Suite 900 Wilmington, De 19899
aty	Eric Michael Suttty	Bayard, P.A.	222 Delaware Avenue Suite 900, P.O. Box 25130 Wilmington, DE 19899
aty	Eric Michael Suttty	Bayard, P.A.	222 Delaware Avenue Suite 900, P.O. Box 25130 Wilmington, DE 19899
aty	Jeffrey M. Schlerf	Bayard, P.A.	222 Delaware Avenue Suite 900 Wilmington, DE 19801
aty	Justin K. Edelson	Bayard, P.A.	222 Delaware Ave. 9th Floor P.O. Box 25130 Wilmington, DE 19899
aty	Mary E. Augustine	Ciardi Ciardi & Astin, P.C.	919 N. Market Street Suite 700 Wilmington, DE 19801
aty	Mary E. Augustine	Ciardi, Ciardi & Astin, P.C.	919 N. Market St. Suite 700 Wilmington, DE 19801

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