

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-11643 (KJC)

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In the Matter of:

WCI COMMUNITIES, INC., ET AL.,

Debtor.

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U.S. Bankruptcy Court
824 Market Street
Wilmington, Delaware

December 2, 2008
10:05 AM

B E F O R E:

HON. KEVIN J. CAREY

U.S. BANKRUPTCY JUDGE

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Motion by Legend Yacht and Beach Club Homeowners Association,
Inc. for Relief from the Automatic Stay Under Bankruptcy Code
Section 362(d)

Debtors' Motion For Contempt Against Calogero and Patricia
Siracusa

Debtors' Motion Pursuant to 11 U.S.C. Section 365(d)(4) for an
Order Extending the Time Period Within Which Debtors May Assume
or Reject Unexpired Leases of Nonresidential Real Property

Debtors' Motion Pursuant to Rule 9019 of the Federal Rules of
Bankruptcy Procedure for Entry of an Order Approving Gateway
Agreements By and Between Renaissance Housing Corporation and
Gateway Virginia Properties, Inc.

Motion to Withdraw as Counsel

Debtors' Motion for an Order Pursuant to Bankruptcy Rules 2002
and 3003 and Local Rule 3003-1(I) Establishing a Bar Date for
Filing Certain Proofs of Claim; (II) Establishing Ramifications
for Failure to Comply Therewith; (III) Approving Proof of Claim
Form and Notice of Bar Date; and (IV) Approving Publication
Notice and Publication Procedures

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Debtors' Motion for an Order Pursuant to 11 U.S.C.
Section 1121(d) of the Bankruptcy Code Extending the Exclusive
Time Periods During Which the Debtors May File a Chapter 11
Plan or Plans of Reorganization and Solicit Acceptances Thereof

Transcribed by: Ellen S. Kolman

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P R O C E E D I N G S

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THE CLERK: All rise. Be seated, please.

THE COURT: Good morning, all.

MR. SCHLERF: Good morning, Your Honor. Jeffrey Schlerf for the debtors. Your Honor, we filed an amended agenda yesterday. We have seven matters on the agenda.

Matters 1 and 3 are continued by agreement of the parties. With respect to number 3, that's their motion to extend under Section 365(d)(4), Mr. Brown will hand up a bridge order in a few moments, but just as an overview of the agenda, Your Honor, numbers 4 and 5, CNOs were submitted. I believe orders have been entered already.

THE COURT: They have been.

MR. SCHLERF: And then that leaves us with matter 2, the motion for contempt, and 6 and 7. Two of the three are uncontested, and I think we'll just follow the order of the agenda. So with that, I'll turn the podium over to Mr. Brown; to White & Case.

THE COURT: Very well.

MR. SCHLERF: Thank you.

MR. BROWN: Good morning, Your Honor. Matthew Brown of White & Case on behalf of the debtors. With regard to item number 2 on the agenda, Your Honor, the debtors' motion for contempt against the Siracusas. The debtors' motion, the attached declaration, set forth the facts regarding the

1 Siracusas' violations of the automatic stay. As set forth in
2 the motions and declarations, on August 11th, following the
3 petition date, the Siracusas commenced an action in New Jersey
4 state courts against two of the debtors and Stewart Title to
5 recover money under a prepetition contract, specifically,
6 economy and deposit being held by Stewart Title. Despite being
7 notified of the bankruptcy proceedings and the applicability of
8 the automatic stay, the Siracusas refused to dismiss the
9 lawsuit. As a result, the debtors were compelled to prepare
10 and file the present motion for contempt and in preparing the
11 motion, communicating with the Siracusas regarding stay
12 violations, and in preparing and filing a suggestion of
13 bankruptcy in the state court, the debtors' estates have
14 incurred well in excess of 10,000 dollars in legal fees.

15 On October 24th, Your Honor, after the debtors had
16 filed the motion for contempt, and not due to any action on the
17 part of the Siracusas, the state court in New Jersey entered
18 and order sua sponte dismissing the debtors from the lawsuit.
19 The lawsuit, however, is apparently still pending against
20 Stewart Title for recovery of the deposit which the debtors
21 feel is estate property because we still have an interest in
22 those escrowed funds.

23 Following entry of the state court order, Your Honor,
24 the Siracusas' counsel contacted the debtors' counsel to
25 request a continuance of the motion for contempt and the

1 debtors agreed. Curiously, however, Your Honor, despite an
2 extension of time to respond to the motion, the Siracusas have
3 failed to respond and just yesterday, Craig Averch of White &
4 Case contacted the Siracusas' counsel, Thomas Kelly (ph.), to
5 inquire about the Siracusas' intentions with respect to this
6 motion. Mr. Kelly did not respond favorably and simply hung up
7 the phone on Mr. Averch.

8 Your Honor, the debtors are not trying to be punitive
9 with the present motion for contempt, but we're sort of in a
10 quandary here. What we have is we have the debtors' estates
11 have incurred significant legal expenses in trying to remedy
12 the Siracusas' stay violations. The Siracusas took no action
13 to dismiss the lawsuit and have not even acknowledged their
14 stay violations, and the problem still persists in that the
15 state court action is still pending with respect to the
16 escrowed funds, which are the property of the debtors' estates.

17 THE COURT: You've brought me up to date on matters
18 that were not covered in the papers so it changes, a little
19 bit, my point of view based on the papers alone. But since the
20 debtors have been dismissed, aren't we now in a situation in
21 which the debtor has to act affirmatively with respect to
22 whatever it wants to do with the litigation, stay it or
23 otherwise, since there's only a nondebtor involved. Haven't
24 events, because of the dismissal of the debtors, outpaced our
25 present procedural context? That's the first question I have.

1 MR. BROWN: Well, Your Honor, the debtors have filed
2 a suggestion of bankruptcy in the state court. There's no
3 indication, based on the order that was entered by the state
4 court, that the proceedings will be stayed as to what we
5 believe is property of the estate. We still have an action
6 pending where the Siracusas are trying to obtain from Stewart
7 Title the res, the deposit that they had put in.

8 THE COURT: Understood.

9 MR. BROWN: So the debtors still feel that that
10 action needs -- that the Siracusas need to be compelled to take
11 further action to dismiss that lawsuit.

12 THE COURT: Yes, I know what the debtors want.

13 MR. BROWN: Okay.

14 THE COURT: But we're now in a situation in which
15 they're no longer at least directly named as defendants in a
16 lawsuit. And, typically, isn't the proper procedural vehicle
17 something like either an adversary or a motion asking that the
18 Court impose a stay against further prosecution of that action
19 or asking for some other relief because of its belief there is
20 property in the estate involved. I mean, I -- let's put it
21 this way, I'll put it another way. Based on this record, it
22 doesn't seem to me to be appropriate for this Court to go
23 farther.

24 MR. BROWN: Well, Your Honor, I guess it seems what
25 the Court is asking is perhaps to have additional evidence put

1 on and further proceedings which, unfortunately, the debtors
2 don't feel in this instance are appropriate. The Siracusas
3 received sufficient notice of this motion, requested a
4 continuance, had sufficient time to respond and simply ignored
5 the motion. Further proceedings all they're going to do, Your
6 Honor, is cause the estates to incur more expenses and fees in
7 trying to combat what is a clear violation of the automatic
8 stay.

9 THE COURT: Well, I don't disagree with the debtors
10 that this was a violation of the stay, if not initially, then
11 certainly by the Siracusas' failure to undo the wrong. And
12 there's sufficient case law to support that. I'm looking at
13 the motion that was filed, and the relief that you're now
14 asking for today in part was not requested in the motion. You
15 requested relief as to what's defined as the WCI defendants,
16 which does not include Stewart Title. So as I said, as a
17 matter of the development of the events as they have occurred
18 and I think for reasons of due process, I can't go further than
19 that. Now, that's not to say that that eliminates the damage
20 claim; I don't think it does. Tell me what proofs you were
21 going to offer in support of the award of the damage claim
22 today, if any.

23 MR. BROWN: Your Honor, the debtors -- I'm sorry,
24 White & Case's fee applications are on file and of record with
25 the Court and in those fee applications, it sets forth what we

1 believe are the debtors' legal fees incurred in combating these
2 stay violations to date. As I said, the fees in combating the
3 stay violations are well in excess of 10,000 dollars, but the
4 debtors feel that an appropriate sanction here would probably
5 be something nominal in the amount of 2500 dollars plus a
6 continuing sanction for further failing to dismiss the state
7 court action.

8 THE COURT: Well --

9 MR. BROWN: As I said, Your Honor -- excuse me, there
10 is a continuing violation here and the Siracusas are trying to
11 obtain or exercise control over property of the debtors'
12 estates with their state court action that was filed
13 postpetition.

14 THE COURT: Well, as I said, I'm not willing to order
15 further relief of that nature without more, so I'm willing to
16 enter an order that concludes there was a stay violation,
17 especially in the absence of any opposition to the relief
18 that's been requested. I'm willing to -- subject to, I guess,
19 the filing of some statement with respect to the damage claim,
20 to enter an order, after notice has been given, that that's
21 what you're seeking in the way of damages; awarding that, but
22 making that relief without prejudice for the debtor to seek
23 further relief if it was just to do so in connection with the
24 remaining defendant in the pending lawsuit. And it may be,
25 ultimately, I will agree with the debtor. But I'm not willing

1 to go farther than what I've just articulated on this record.

2 MR. BROWN: Okay, thank you, Your Honor. The debtors
3 will prepare a form of order and submit it under certification
4 of counsel.

5 THE COURT: All right, thank you. And in your
6 noticing, have you been noticing simply the Siracusas' lawyer
7 or them individually as well?

8 MR. BROWN: Your Honor, I do not recall off the top
9 of my head. I can check into that if you'd like.

10 THE COURT: Okay. Well, let's put it this way, I
11 direct that with respect to service of the order that you're
12 about to submit, that that be served on the Siracusas directly;
13 not just on their attorney.

14 MR. BROWN: Certainly, Your Honor.

15 THE COURT: All right.

16 MR. BROWN: Moving to item number 3 on the agenda,
17 Your Honor, this is the debtors' motion to extend the time to
18 or assume or reject leases of nonresidential real property. As
19 the Court may recall, an order has already been entered
20 extending the time with respect to all leases except for the
21 ground lease between the debtors and Great Expectations LLC,
22 which objected to the relief. The debtors and Great
23 Expectations agreed to continue their objection to today's
24 hearing and have now further agreed to continue the objection
25 to January 6th, the omnibus hearing on that date. Because the

1 January 6th date is beyond the initial 120 days, the parties
2 have agreed to a form of bridge order which I can present to
3 the Court.

4 THE COURT: Very well.

5 MR. BROWN: May I approach?

6 THE COURT: Thank you. That order has been signed.

7 MR. BROWN: Thank you, Your Honor. That takes us,
8 Your Honor, to item number 6 on the agenda, the debtors' motion
9 to set a general bar date for filing proofs of claim. Your
10 Honor, the debtors shared the motion with the creditors'
11 committee prior to filing and accept the numerous comments from
12 the committee with regard to the form of proposed order.

13 Although no objections were filed with respect to the motion,
14 the committee had one additional request and changed the
15 proposed order, which the debtors agreed to. If you'd like,
16 Your Honor, I can present a blackline showing those changes?

17 THE COURT: That would be helpful, thank you.

18 MR. BROWN: Your Honor, as reflected in the
19 blacklined order, the debtors have agreed all the directors,
20 officers and employees of the debtors having contingent
21 unliquidated claims against the debtors for indemnification and
22 the like will not be required to file proofs of claim by the
23 bar date. Such parties will be required to file a proof of
24 claim for those claims if they leave the employment of the
25 debtors.

1 To account for the corresponding changes that will be
2 required to the form of bar date notice and publication notice,
3 the order has also been modified to approve those notice
4 substantially in the form attached to the motions. And with
5 those changes, Your Honor, I would ask that the Court enter the
6 bar date order.

7 THE COURT: All right. Does anyone else care to be
8 heard in connection with this matter? I hear no response. All
9 right, I've reviewed the blackline; don't have any questions.
10 I'm prepared to grant the relief that's been requested. That
11 order has been signed.

12 MR. BROWN: Thank you, Your Honor. And with that,
13 I'll turn the podium over to Mr. Lauria for item number 7 on
14 the agenda.

15 THE COURT: Very well.

16 MR. LAURIA: Good morning, Your Honor. Tom Lauria,
17 with White & Case, for the debtors. As of today, the debtors
18 have been in Chapter 11 for 120 days. The hearing on our first
19 motion to extend exclusivity is, in effect, a checkpoint; an
20 opportunity for the Court to assess our conduct of the case and
21 determine if we are entitled to a passing grade. I think the
22 record in these cases makes clear that cause exists under
23 Section 1121(d) for the extension of the debtors' exclusive
24 periods to file and solicit acceptances of the plan. All of
25 the factors courts have traditionally considered in determining

1 to extend exclusivity are present here and weigh strongly in
2 favor of granting the debtors' request for a 120-day extension.
3 By any measure, these are large and complex cases. The debtors
4 have made substantial good faith progress toward the
5 preservation and rehabilitation of their businesses and the
6 requested extension is not in any way being used for the
7 purpose of trying to force stakeholders to accept any
8 particular plan. Indeed, to the contrary, the extension is
9 being sought to facilitate an orderly process for the debtors
10 to engage their stakeholders in discussing and formulating the
11 terms and structure of a plan. One that will take into account
12 and appropriately reflect the potentially divergent views of
13 the various interests in these cases and one that will in the
14 end presumably, or at least we hope, will be largely
15 consensual. In that regard, I don't think anyone has argued or
16 can argue that any party in these cases is better positioned,
17 at present, to drive such a process than the debtors. Or that
18 the debtors' conduct of these cases, to this point, in any way
19 suggests that they cannot or will not conduct the plan process
20 in an appropriate and constructive fashion.

21 A brief review of the filings and record made before
22 this Court, of which we would ask that the Court take judicial
23 notice, makes clear that the debtors have not acted in a
24 dilatory fashion or dragged their feet. To the contrary, we
25 have actively and aggressively progressed the case and are now

1 poised to commence the plan negotiating process. We have taken
2 substantial steps to protect and stabilize the business in
3 Chapter 11. The Court will recall that we've obtained
4 important relief that has permitted the debtors to continue
5 their core businesses of building and selling homes. In that
6 regard, the results speak perhaps as loud as the words.

7 From the commencement of the case on August 4th
8 through Wednesday of last week, the debtors have generated 117
9 million dollars of revenues as compared to budget of 102
10 million dollars of revenues for that period. We are up against
11 budget in all categories; home sale, tower unit sales and
12 miscellaneous income which includes amenity, revenue, etcetera.
13 Disbursements, which include SG&A and operating expenses, are
14 103 million dollars during that period against a budget of 145
15 million dollars for a net savings of 42 million dollars. Other
16 expenses, which include land acquisition costs and CDD
17 expenses, have been effectively zero during this period against
18 the budget of approximately 10 million dollars, and
19 restructuring expenses have to date run at approximately 30
20 million dollars versus budget at 34 for an additional savings
21 of 4 million dollars.

22 As a consequence, when you add all the above up,
23 budget contemplated at a cash loss of 86 million dollars during
24 the first four months of the case and, in fact, we have had a
25 cash burn of 17 million dollars; roughly 4 million dollars a

1 month. And so we're a total of about 69 million dollars ahead
2 of budget, on a cash basis, through Wednesday of last week.

3 In addition, total current liquidity is approximately
4 149 million dollars, comprised of 79 million dollars of cash on
5 hand and undrawn availability under the DIP facility of 70
6 million dollars.

7 As noted, in addition to the relief that we've
8 obtained to facilitate the business on an operating level, we
9 also negotiated and obtained a DIP financing in a market, and
10 for a business, where financing dollars of any kind are largely
11 unavailable. We've prepared and filed schedules and statements
12 of affairs for all 127 debtors. We've dealt with various
13 exigent matters including the management of over 170 pending
14 lawsuits at the time of the filing and the resolution of
15 material disputes with the debtors' sureties who are, as the
16 Court is well aware, providing a service that is essential to
17 the viability of a homebuilder. And we are actively reviewing
18 and assessing our executory contracts and leases and have, to
19 date, sought the rejection of approximately fifty burdensome
20 contracts and leases.

21 We've also taken important preparatory steps to
22 engage in our primary stakeholder representatives and plan
23 negotiations. We've met with the creditors' committee and our
24 secured lenders to discuss the status of the business and the
25 challenges it faces. As contemplated by the debt, we have

1 formulated an acceptable comprehensive budget for the ongoing
2 operations of the business in Chapter 11. Management has
3 performed a bottoms-up project by project assessment of its
4 assets determining where and how value can be realized and
5 losses stemmed or eliminated.

6 We've commenced and substantially completed the
7 process of formulating a preliminary proposed business plan and
8 with the input of our stakeholders, we anticipate that this
9 plan will serve as the platform for future plan negotiations.
10 This is an activity that's been made particularly difficult and
11 challenging by the ongoing meltdown in financial markets and
12 the economy at large. As the Court is aware, the markets have
13 demonstrated incredible, if not unprecedented, volatility in
14 the past two months, which is precisely the time when the
15 debtors' management and its advisors have been huddling, trying
16 to formulate reasonable macroeconomic assumptions that will
17 serve as the backbone for the debtors' five-year business plan.

18 Core issues have included assessing how much further
19 new home prices can be expected to climb in 2009, when will a
20 recovery commence and what will be the pace of the turnaround
21 when it occurs.

22 THE COURT: So, did you find any answers to those
23 questions?

24 MR. LAURIA: No, but we had a lot of arguments about
25 it, Your Honor. And as I'm sure the Court will learn in due

1 course, we have come up with I think what is an appropriate
2 approach under these circumstances to trying to deal with those
3 uncertainties.

4 These are obviously difficult issues, and I can
5 represent to the Court that they have, in fact, been the
6 subject of animated debate at the management level and at the
7 board. I can also represent to the Court, though, that the
8 board met yesterday afternoon as a part of a series of meetings
9 that we've had over this process and authorized, at that
10 meeting, for management to go forward with the presentation of
11 business plan materials and projections to the debtors' key
12 stakeholder groups. It's our current intention to reach out
13 and schedule meetings for the presentation and administrative
14 discussion of these matters as soon as possible, presumably in
15 the next couple of weeks, as parties' schedules permit.

16 So that leaves the question of what we plan to
17 accomplish in the requested 120-day extension period. During
18 the first thirty to sixty days, we anticipate discussing and
19 refining our business plan and projections with the creditors'
20 committee, the secured lenders and the respective advisors.
21 Thereafter, we anticipate using the remainder of the period to
22 engage these parties in discussions to develop and negotiate a
23 framework. How much debt should the reorganized business have?
24 What will the liquidity requirements be? What is the value of
25 the business? How should it be allocated and in what form

1 should it be reflected? What new money is required? What form
2 should it be in and how should we raise it? And, importantly,
3 to what extent and in what fashion should the business and
4 assets be marketed to third parties? Your Honor, these are not
5 simple questions upon which we can anticipate that all parties
6 will agree at once. We're going to need some time.

7 Under these circumstances, we believe our request is
8 reasonable and that the limited objections that have been
9 lodged with respect to the requested extension should be
10 overruled. As a preliminary matter, recognizing that the
11 extension is without prejudice to any objecting party's right
12 to subsequently seek to short exclusivity for cause, we think
13 that the extension is not prejudicial to our stakeholders. It
14 is also important to note that the objections come from our
15 prepetition secured lenders who negotiated for and obtained
16 substantial protections which remain valid and in force in
17 connection with our agreements regarding use of cash collateral
18 and the obtaining of DIP financing. The presence of these
19 remedies makes the need for additional protections in the form
20 of shortened exclusivity, or additional triggers to the
21 continuance of exclusivity, dubious at best.

22 Turning to the specific points raised, as already
23 mentioned, we will be presenting our business plan to our
24 stakeholders as soon as meetings can be scheduled. This, we
25 think, renders moot the demand that a business plan be

1 presented by the end of December as a condition to ongoing
2 exclusivity.

3 As to the second point raised that a plan term sheet
4 should be delivered to the stakeholders no later than February
5 15th, we think that this would have a negative effect, as
6 opposed to a positive effect, on planned discussions. As
7 stated, we intend to engage our stakeholders and work with them
8 to build consensus, and we don't think that an arbitrary date
9 for delivery of a term sheet advances the cause.

10 We are anxious to move swiftly, Your Honor, but we
11 don't want to create any artificial leverage for a party to
12 hold out from engaging in negotiations. Nor do we want to take
13 the chance of putting out a term sheet that as a consequence of
14 being mature, could retard discussions and force the
15 calcification of positions.

16 To put it simplistically, we need flexibility to
17 respond to, develop and incorporate our stakeholders' views in
18 the plan formulation process.

19 Finally, Your Honor, a sixty-day extension is simply
20 too short and unduly burdensome. At this point in the case, no
21 one else has indicated they are prepared to file a plan; 120
22 days is simply not prejudicial because as I mentioned,
23 everybody is free to come back and say that for whatever reason
24 constitutes cause, the period should be shortened. And, in
25 contrast, the sixty-day period would not provide a reasonable

1 opportunity, given the size and complexity of this case, for us
2 to understand and attempt to bring together what may well be
3 divergent views as between the secured lenders and the
4 committee. In short, too short a runway, we believe, would
5 counter-incent a party to hold out rather than to come to the
6 table and negotiate.

7 As a final consideration, a sixty-day extension
8 would, in effect, require a renewed motion to seek a further
9 extension by exclusivity to be filed in early January. We
10 believe this would be both inefficient and ultimately serve as
11 a distraction to the more important task of focusing on plan
12 negotiations. Based on all the foregoing, we would ask that
13 the Court extend the exclusive periods, as requested in the
14 motion, by 120 days.

15 THE COURT: Thank you.

16 MR. PEZANOSKY: Good morning, Your Honor. Steve
17 Pezanosky, with Haynes and Boone, on behalf of Bank of America
18 in its capacity as agent for the prepetition revolving lenders.
19 As Mr. Lauria indicated, Your Honor, we filed a very limited
20 objection to the request for extension of exclusivity. I would
21 note that we were brought into the discussion about exclusivity
22 fairly late in the game, so to speak. We were called late in
23 the afternoon that the motion was being filed and asked to
24 consent to the extension. Didn't have time to consult with our
25 clients and indicated to counsel for the debtors that we would

1 move as quickly as we could to consult with our clients but
2 that they should go ahead and file their motions so they could
3 have it set for today.

4 We have had extensive consultations with our clients,
5 with White & Case, and as a result of that, we learned from our
6 clients that there is a growing concern amongst the revolving
7 lenders that any undue delay in getting these debtors out of
8 bankruptcy puts our clients at severe and significant risk for
9 a deteriorating market to have a detrimental impact upon our
10 collateral.

11 Because of that, we filed this limited objection;
12 don't object to 120-day extension of exclusivity. We do think
13 that that is reasonable under these circumstances. However, we
14 do think it is necessary and appropriate to put some objective
15 milestones in place to make sure that the debtor is, during
16 this 120 days, making adequate progress toward confirmation of
17 a plan. And in that regard, in our -- what I would call our
18 fairly soft objection, we have requested and suggested to the
19 Court that the Court impose two, I think very easy, milestones,
20 one being the delivery of a business plan to the stakeholders
21 by the end of this year.

22 THE COURT: And that sounds as if it's fairly
23 imminent.

24 MR. PEZANOSKY: I would agree and therefore I would
25 think that that should not -- should be a milestone that nobody

1 should have a problem with firming up and putting in place.

2 And the second, Your Honor, is simply the delivery of
3 a plan term sheet by February 15, 2009, so that we would have a
4 little bit less than two months to actually try to finalize
5 negotiations toward a plan that can be put on file by the end
6 of this extended exclusivity. And we think both of those are
7 fairly reasonable and should be fairly attainable milestones
8 for the debtor.

9 THE COURT: Well, the submission of a term sheet by a
10 date certain seems to me is a real easy one because even if
11 negotiations haven't proceeded as well as anyone would have
12 liked to meet the deadline, the debtor can always make
13 something up and it doesn't seem to me that would be useful.

14 MR. PEZANOSKY: Well, fair enough, Your Honor. What
15 we are concerned about, though, is if the case drifts along and
16 negotiations drift along what we, in our experience, have found
17 that if a term sheet is put in play and the parties have to
18 look at ideas and a framework for a plan on a piece of paper,
19 that it will accelerate the process and get everybody focused
20 on what needs to be done. Particularly in a situation where
21 we're looking at a little bit less than two months before
22 exclusivity expires. You know, that being said, Your Honor,
23 again, all we were requesting and suggesting is that some
24 objective milestones be put in place as a condition for the
25 extension of exclusivity so that we can be sure and the Court

1 can be sure that the debtors and the parties-in-interest are
2 making adequate progress toward confirmation of a plan.

3 THE COURT: Thank you.

4 MR. STERN: Your Honor?

5 THE COURT: Yes.

6 MR. STERN: This is Joseph Stern representing Jan
7 Aikin.

8 THE COURT: Yes, let me ask -- Mr. Stern, let me ask
9 you to just wait one moment till I hear from the term lenders.

10 MR. STERN: I'm sorry.

11 THE COURT: That's all right.

12 MR. SOLOW: Thank you, Your Honor, Sheldon Solow on
13 behalf of Wilmington Trust as the agent for the term lenders.
14 And I certainly would have deferred to the gentleman on the
15 telephone, but I thank you anyway, Your Honor.

16 Your Honor, we filed a limited objection as well.
17 Our perspective, although similar to the gentlemen before me,
18 is somewhat different and that explains the difference in our
19 objection. Your Honor, we weren't consulted at all with
20 respect to the extension before the case -- before it seemed --
21 before the motion was filed. We first heard of it after it was
22 filed. And our concern is simply that the process must have
23 some control. There is no one as surprised, in a case of this
24 type -- when the debtor comes in and asks for an extension of
25 exclusivity. Absent a prepackaged plan that is expected; it's

1 not unusual. There's no one in this courtroom, I think, who
2 expected anything but a request for an extension. Whether the
3 case warrants a 120-day extension, the jury is still out. Yes,
4 the case is large. How complex it is, we're not certain, Your
5 Honor. There are lots of real estate cases, and they're driven
6 by the market. And as the debtor indicates, the market isn't
7 getting much better. Things aren't changing much. There are
8 limited options for them. In the meantime, notwithstanding the
9 budget that they set up, and a budget's a lot like a term
10 sheet, Judge, you set it up so that you can hit your
11 benchmarks; the case is expensive. My clients noted to me
12 today before I went in, via e-mails, that legal fees alone, on
13 the debtors' side, are in excess of 6 million dollars requested
14 so far. While in a case of this size that may not seem much,
15 clients count those things and they count what we charge as
16 well.

17 The jury is really out on how the process will be
18 driven. We note that the motion suggested that they would try
19 to get us a term sheet by the end of the year and when the
20 objections came in on the day of the hearing, we're going to
21 get a term sheet that was -- excuse me, a business plan that
22 was proposed yesterday. And that's good. Obviously, that's a
23 benchmark they can meet.

24 We're not about setting artificial benchmarks, Your
25 Honor. I understand your point quite well that if you have a

1 date to get a piece of paper on file, you file a piece of
2 paper. What we're really concerned about is whether real
3 progress is being made between the parties. And that's why we
4 suggested in our motion that Your Honor limit the extension to
5 sixty days. But I further suggest, so that the parties could
6 report if they were good faith negotiations ongoing and we're
7 making progress, we would be prepared to stipulate, in the
8 future, to a further extension provided that there is progress.

9 Now, obviously, that requires a leap of faith on both
10 sides, that both sides act in good faith toward each other and
11 report properly to the Court. I know what our intention is.
12 Our intention is to try to move the case toward an appropriate
13 conclusion. But if we're not making progress, Your Honor, if
14 the discussions are not going anywhere, then I think that the
15 debtor ought to be required to come in and explain to the Court
16 why they need the additional time.

17 This is a large case; money is spent every day. We
18 know there are important concerns for all parties, including
19 ours, and we simply suggest that the 120 days merely puts off
20 the day when we have to find out whether we're making progress.
21 If we are, I can assure the Court that we were the first ones
22 to step up and say there's no need to come in again, let's go
23 forward later on. But if we're not making progress, Your
24 Honor, I think what they're doing is they're shifting the
25 burden. You see, the debtor has to show a reason for extension

1 of exclusivity; it's not up to the creditors to come in and say
2 take it away. And all we're suggesting is where we are --

3 THE COURT: Although you could.

4 MR. SOLOW: Oh, yes, we could. But the statute puts
5 the burden on the debtor to get the extension, not on the
6 creditors to spend the money, to spend the time. We're
7 prepared to meet. They want to meet in the next two weeks, I
8 guarantee you we will, Your Honor. I guarantee you that we
9 will be prepared to sit down and listen, try to be constructive
10 and, of course, whether one's being constructive is in the eyes
11 of the beholder, of course, and report to the Court. And if
12 we're making progress, you won't have any more problems with
13 us.

14 But if we're not, let them meet the burden; 120 days
15 in a case in an economy where there isn't a lot going on in
16 their business, where values continue to fall, is simply too
17 long in our opinion, Your Honor. Thanks for your time.

18 THE COURT: Thank you. Mr. Stern?

19 MR. STERN: Yes, thank you, Judge. I represent Jan
20 Aikin. We had a hearing, a telephonic hearing, with you back
21 on September 23rd. You entered your order on that on October
22 10th. She had an appeal pending, still does, and we were ready
23 to go to oral argument when the bankruptcy was filed and, of
24 course, there was the stay of the hearing and the appeal. And
25 our concern is what you indicated at the hearing back in

1 September, you expressed concern of unnecessary delay in
2 developing a plan for dealing with prepetition lawsuits. And
3 you said, quote, "By that time", meaning December 17th, the
4 next omnibus hearing where we could be heard on this, "By that
5 time, I expect the debtor to be able to tell me how, in a
6 broader way, it intends to address these matters."

7 Well, our feeling is that WCI's motion for an
8 extension raises this very concern, because it said on page 31
9 of its motion it's working to formulate, quote, "an alternative
10 dispute resolution procedure". Well, that doesn't really
11 resolve Aikin's claims because they involve issues of state
12 law, and had the stay been lifted back at the hearing in
13 September, her appeal probably would have been decided by now.
14 There is nothing for WCI to do, really. Their appellate
15 counsel is briefed and ready to go, as am I.

16 We would simply like you to, if you're going to grant
17 their motion, make an exception for dealing with prepetition
18 lawsuits. I don't see how an alternative dispute resolution
19 procedure is going to do anything. I mean, these are appeals
20 that are pending. You have in front of you -- pardon me, not
21 physically in front of you, but there is also a motion that was
22 filed within the last week that will be heard on December 17th,
23 another motion for relief from the stay by Richard and Patricia
24 Beach (ph.) They're in, factually, very similar circumstance
25 to ours. I don't know that we should all have to wait for WCI

1 to come up with this alternative dispute resolution procedure.
2 The appeals should go forward. They're ready to go on oral
3 argument and let the appellate courts decide it and then if we
4 get judgments, then let WCI deal with them, pay them if they
5 can. But an alternative dispute resolution procedure doesn't
6 afford my client, and I don't think the Beaches either, much
7 advantage of anything, really.

8 THE COURT: Mr. Stern, what did my order provide?

9 MR. STERN: That the -- her motion for relief from
10 the automatic stay would be reheard December 17th.

11 THE COURT: Okay.

12 MR. STERN: The next omnibus hearing.

13 THE COURT: And I'm content to leave it at that
14 because, frankly, while you have every right to object to the
15 debtors' request here, I would be uncertain how to fashion the
16 relief, precisely, that you ask.

17 MR. STERN: No, I understand and as the motion goes,
18 per se, I don't have an objection to it except the motion did
19 talk about prepetition lawsuits. And, in effect, if you grant
20 the motion in its entirety, you allow them 120 days to come up
21 with that thereby mooting whatever wouldn't be decided at the
22 December 17th hearing.

23 THE COURT: I disagree with that completely. You
24 will -- as I told you in October, I guess it was, I would be
25 fully prepared to revisit the issue and the fact that the

1 debtor may very well argue that resolution should await the
2 proposal of a plan. I told you I would hear you again and I
3 did expect the debtor to be able to address it at that point,
4 and that expectation has not changed. Now, I'm not saying I'll
5 grant the relief that you've requested but you will have a fair
6 opportunity to, given the passage of time, make that argument.
7 So the entry of this order does not foreclose that motion.

8 MR. STERN: If that's the case, Your Honor, I'm fine
9 with that. But I wanted to be heard -- I didn't want to assume
10 that from your order. I felt the need to at least go through
11 the motions of filing an objection and being heard. But if
12 you're going to say it's not going to affect what happens on
13 December 17th, then that's fine.

14 THE COURT: All right. Thank you. Now, forgive me,
15 let me just take a five-minute break and I will be back and
16 hear from others who wish to be heard in connection with this
17 matter, and I'll give the debtor a brief opportunity for
18 rebuttal if it wishes to have that. We'll stand in recess.

19 IN UNISON: Thank you, Your Honor.

20 (Recess from 10:45 a.m. to 10:50 a.m.)

21 THE CLERK: All rise. Be seated.

22 THE COURT: All right. Does anyone else care to be
23 heard in connection with this matter?

24 MS. BECKERMAN: Yes, Your Honor. Lisa Beckerman on
25 behalf of the creditors' committee. Your Honor, as the motion

1 indicates, the committee is supportive of the company's
2 request. I think unlike some of the parties that have been
3 before you, I can report that we had extensive discussions with
4 the company before they actually filed this motion as my
5 understanding is also with the respect to the DIP lenders as
6 well.

7 This wasn't a request that in the motion that, I
8 think, came easily. It wasn't where the company started and it
9 wasn't where we started, not surprisingly, and where our
10 positions were as to what an appropriate extension would be.
11 We had a number of discussions, which is why the motion
12 reflects the fact that the company is committed to delivering
13 the business plan and that there would be plan negotiations
14 during the period because those were things that the committee
15 was very insistent about. We certainly considered some of the
16 benchmarking that has been requested otherwise by parties, but
17 I think we have been comfortable because of the process that
18 we've been through with the company and the way that this case
19 has been conducted so far that when the company has made
20 commitments to the parties about delivery of documents or
21 processes that they're going to undertake they have done so.
22 And, therefore, we do not feel that it was necessary to put
23 such benchmarks in the order.

24 And we believe that the company will comply with what
25 they've indicated to the committee and the DIP lenders that

1 they would do so. And our thoughts were that once the business
2 plan was delivered, Your Honor, there will have to be fairly
3 extensive due diligence that has to be conducted by our
4 financial advisors and the other constituents' financial
5 advisors. And at least our financial advisors have indicated
6 that such a process could take something like thirty to forty-
7 five days.

8 So when we were considering the same sort of issue
9 that one of the limited objectors had raised about a plan term
10 sheet, we had thought about the process and the timing and
11 realized that, you know, we'd have to have some flexibility
12 because once we've had some give and take on the business plan,
13 there might be changes to it and then needs to develop --
14 discuss plan off of that type of revised business plan and that
15 that would not happen overnight and that therefore, perhaps, an
16 artificial date wasn't appropriate which is why we, in our
17 discussions, decided not to go with that and just to be
18 comfortable with the commitment of the company to engage in
19 discussions.

20 I think that the concerns of the prepetition lenders,
21 with respect to the market, are very understandable. And,
22 obviously, the company has indicated, I think appropriately,
23 that there are some provisions in the DIP lender and
24 prepetition adequate protection provisions in the DIP order
25 that have triggers with respect to that as well. But none of

1 us plan on being in this case for eternity. I think we all are
2 committed to trying to work through a restructuring at an
3 appropriate pace. I think we're all mindful of the problems
4 that we have with the long-term housing market and that the
5 situation isn't getting better.

6 And I think the constituency's been working
7 appropriately in that fashion throughout this case so far and I
8 don't see that changing, which is why I think we were
9 comfortable with the extension request by the debtors and got
10 comfortable with it as well as with not requiring specific
11 benchmarks other than what's set forth in the motion. So with
12 that, I'd ask the Court to actually grant the motion as
13 requested by the company and enter the order requested by the
14 company.

15 THE COURT: All right. Thank you. Anyone else care
16 to be heard? Before I go back to the debtor, let me ask this.
17 Today, I've heard argument. There's been no evidentiary
18 hearing or evidentiary support for the representations that the
19 debtor has made through counsel. But I take it that nobody
20 disputes, at least for today's purposes, again, without
21 limiting anybody's rights at future hearings, that for today's
22 purposes, the company's efforts and circumstances are as
23 they've been described by debtor's counsel and that the dispute
24 today really is one over what's the best strategy and does the
25 strategy that the debtor here proposes satisfy the cause

1 standard. If one of the objectors has a view to the contrary,
2 I would say stand and tell me now. Okay, I hear and see no
3 response. Mr. Lauria, anything further from the debtor?

4 MR. LAURIA: Your Honor, just two brief comments.
5 Number one, I want to personally take responsibility for the
6 failure to have communicated regarding the extension request
7 with the prepetition agent and the term lenders. We had, in
8 fact, been engaged in discussion with Davis Polk and had
9 wrongly assumed that those communications were getting sent on
10 to the entire group and so that when they were responding,
11 their response was an aggregate view of the lender group. We
12 learned of that slipup on our part the day we were filing the
13 motion and made some adjustments that are reflected in the
14 motion and as been represented by counsel. But I did want to
15 make clear, on the record, that that was not an intentional
16 strategy or a game we were playing at trying to exclude parties
17 from discussion; it was just a miscommunication on our part.

18 The second point I wanted to just mention is that I
19 think on the record, and based on the fact that nobody really
20 disputes the statements that we've offered to the Court, there
21 is no contravening showing or even argument of any weight that
22 a shortened exclusivity period, or an exclusivity period marked
23 by random benchmarks, would in any way advance the process or
24 promote the interests of the estate and its stakeholders.
25 Indeed, to the contrary, I think it can be anticipated that

1 there are going to be divergent views and this is going to be a
2 situation where at least in the near term, the maintenance of
3 exclusivity will provide a basis for the parties to come
4 together and have to work with each other as opposed to moving
5 away and in separate directions towards what could be certainly
6 an expensive process from competing plans. Which is in my
7 experience, and I presume in the Court's, an extraordinary
8 circumstance and not an ordinary one.

9 So we would just reiterate the initial presentation
10 and argument that under the circumstances, and I -- by the way,
11 I do think the Court can take judicial notice of all of the
12 papers and proceedings that have been conducted before it and
13 that that can properly be incorporated into the record for this
14 hearing;, that the requested extension is in the best interest
15 of the estate and that cause has, in fact, been shown.

16 THE COURT: All right. Thank you. I am prepared to
17 make my ruling and will grant the relief that's been requested
18 without imposing additional conditions and these are the
19 reasons.

20 The debtor, I think, has made a fairly sound and
21 solid demonstration that it is moving forward. Today, the 11s
22 are moving so rapidly in part because of the market and in part
23 because of -- meaning values of assets and in part because of
24 the continuing credit problems in the market. You know, there
25 was a time, believe it or not, when people would argue the

1 debtor should stay in 11 for a while to let things develop, but
2 as it turns out in the present day, developments all seem to be
3 going in the wrong direction.

4 So I can understand the lenders' anxiousness about
5 wanting to move forward on a fairly fast paced basis. And it
6 sounds to me as if the debtor's prepared to do that. The
7 request, I think, is a fairly modest one under the
8 circumstances. To the extent the debtor comes back for more,
9 it may be that a more extensive record's going have to be made
10 in support of such a request. But for now, and for those
11 reasons, I will grant the relief that's been requested. Do you
12 have a form of order for me?

13 MR. LAURIA: Your Honor, I believe we submitted one
14 with the motions. If I may approach, Your Honor?

15 THE COURT: You may. Thank you. All right. That
16 order has been signed. Is there anything further for today?

17 MR. LAURIA: That's all, Your Honor.

18 THE COURT: All right. Thank you. That concludes
19 this hearing. The court will stand in recess.

20 (Proceedings concluded at 11:00 AM)

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I N D E X

RULINGS

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Debtors' motion for an order to extend 15 6
the time to assume or reject leases
of nonresidential real property, granted.

Debtors' motion for an order to set 16 11
a general bar date for filing proofs of
claim, granted.


Debtors' motion for an order to extend 39 16
exclusivity, granted.

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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Ellen S.
Kolman**

 Digitally signed by Ellen S. Kolman
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Date: December 11, 2008

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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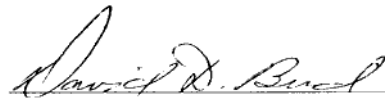
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