

**Motion of Dwight Clark and Mike Collins for Relief from Stay Under Section 362 of the Bankruptcy Code (the “Clark Motion”)**

By the Clark Motion, Dwight Clark and Mike Collins (together, the “Movants”) seek relief from the automatic stay to allow Movants to (i) liquidate their claim in a pending Florida state court litigation (the “Action”), (ii) proceed in the Action to final judgment, and (iii) recover their Escrow Deposit (as defined below).

Movants maintain that in 2005, they entered a contract (the “Contract”) to purchase a unit from WCI Communities, Inc. (“WCI”), and made escrow deposits totaling \$183,000 (the “Original Escrow Deposits”) with Chicago Title Insurance Company (the “Escrow Agent”) as required by the Contract. In 2007, the Movants sent WCI a letter notifying WCI that language WCI thereafter added to certain documents in the condominium prospectus materially altered the Contract and adversely affected Movants’ rights. Accordingly, Movants notified WCI of their intention to cancel the Contract and demanded the return of all the Original Escrow Deposits. WCI responded that they disagreed with Movants’ entitlement to cancel the Contract.

In response, Movants filed the Action against WCI and the Escrow Agent (collectively, the “Defendants”) seeking the return of the Original Escrow Deposits, interest, attorney’s fees and other costs. After the filing of the Action, WCI refunded to the Movants \$45,750 of the Original Escrow Deposits.<sup>1</sup> The remaining balance of the Original Escrow Deposits is \$137,250 (including interest thereon, the “Escrow Deposit”).

On November 6, 2007, the Defendants filed a motion to dismiss the Action, and a hearing was scheduled for February 29, 2008. Movants maintain that the Defendants unilaterally cancelled the hearing the day before it was scheduled, and the hearing was rescheduled for August 22, 2008. In the interim, WCI filed for chapter 11 protection.

Movants assert that WCI will not suffer great prejudice by lifting the automatic stay because (i) the Action has been pending since October, 2007, and (ii) WCI is represented in the Action by separate local counsel so WCI will not require significant commitment of resources from bankruptcy counsel or WCI’s employees. Additionally, Movants believe that if the stay is modified and they are successful in the Action, they will be able to recover the Escrow Deposit from the Escrow Agent. Movants also maintain that they will not take action to execute on the judgment to collect any additional damages or attorney’s fees pursuant to the Contract and costs against the Debtors, without further order of the Bankruptcy Court.

Furthermore, Movants assert that leaving the automatic stay in place will cause them significant hardship because (i) it could lead to duplicative litigation, (ii) Movants have already been without their Escrow Deposit for nearly four years, and (iii) the delay in liquidating the Action is due to WCI’s prolonging the cases until after they filed their bankruptcy petition. Movants also assert that they have a probability of success on the merits in the Action, as demonstrated by their filed complaint.

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<sup>1</sup> Pursuant to the Contract, WCI is only permitted to retain 15% of the purchase price as liquidated damages.