

Kraft Construction Company, Inc.’s Motion for Relief from the Automatic Stay (the “Kraft Motion”)

By the Kraft Motion, Kraft Construction Company, Inc. (“Kraft”) seeks entry of an order modifying the automatic stay (the “Stay”) to allow Kraft to obtain discovery from the Debtors in connection with a pending Florida state court action (the “Florida Action”). Because Kraft is seeking discovery to enable it to defend itself in the Florida Action, and it is not seeking to pursue a claim against the Debtors, Kraft does not believe that the Stay applies to its request. However, out of an abundance of caution, Kraft seeks relief from the Stay to obtain discovery.

According to the Kraft Motion, in June, 2007, Belize Condominium Association, Inc. (the “Association”) filed the Florida Action in Collier County, Florida against Debtor Bay Colony-Gateway, Inc. (“Gateway”) and Kraft. The Association, which controls and manages a high-rise condominium, asserted claims against Gateway, as the developer, and Kraft, as the general contractor, for alleged construction defects. Gateway participated in discovery with respect to the Florida Proceeding until it filed for bankruptcy and the Florida Action has been stayed against Gateway.

Kraft maintains that the Association has asserted identical causes of action against Gateway and Kraft in the Florida Action, including (i) breach of statutory warranties, (ii) negligence, and (iii) violation of the building code. By law, Kraft and Gateway have warranted to provide a condominium that is fit and constructed in accordance with the applicable codes. Accordingly, Kraft alleges that its duties are inextricably intertwined with Gateway’s duties.

Kraft asserts that it cannot defend itself against the claims of the Association without obtaining discovery from Gateway. Kraft claims that it needs discovery with respect to (i) what actions, if any, were taken between the time when Kraft completed its work and the date the condominium units were turned over to the Association, (ii) documents and communications relating to the design of the high rise, and (iii) any notice of warranty claims or construction defects received by Gateway, and any action taken in response. Accordingly, Kraft seeks to serve subpoenas on Gateway requesting the production of documents and depositions of Gateway.

Kraft asserts that Gateway will not be prejudiced by allowing the Stay to be modified to permit Kraft to conduct discovery because Gateway already participated in the Florida Action for several months before it filed its bankruptcy petition. Therefore, Kraft believes that Gateway is well aware of the issues presented in the Florida Action and may have already started to compile relevant documents. Accordingly, Kraft maintains it is not likely that responding to the document request will take Gateway a significant amount of time. Furthermore, Kraft believes that it will need to take only a few depositions, although it may require witnesses to testify at trial. In contrast, Kraft maintains that if it is not permitted to obtain discovery from Gateway, it will be unable to properly defend the claims asserted against it by the Association.