

Motion of Kenneth and Judith Galician for Relief from the Automatic Stay (the “Galician Motion”)

By the Galician Motion, Kenneth and Judith Galician (the “Galicians”) seek relief from the automatic stay to commence a state court action to pursue recovery of their escrow deposit from the Debtors.

The Galicians maintain that in September of 2007 they (i) entered into a purchase contract with the Debtors (the “Contract”) for a lot and residence in the Venetian Golf and River Club in Sarasota, Florida, and (ii) deposited an escrow deposit (the “Deposit”) with Debtor WCI Realty, Inc. to hold pending performance of the Contract.¹

The Galicians maintain that, on November 13, 2008, they rescinded the Contract. They assert that the Debtors breached the Contract by (i) failing to disclose the location of certain transformer boxes, and (ii) failing to timely provide a final site plan. The Galicians further assert that the Debtors’ default entitles the Galicians to the return of the Deposit pursuant to the Contract. Additionally, the Galicians believe that the Contract violates provisions of the Interstate Land Sales Full Disclosure Act in that the Debtors failed to provide the Galicians with a property report.

The Galicians maintain that, despite a written request, the Debtors have refused to return the Deposit to the Galicians. The Galicians assert that (i) the Debtors will not suffer significant prejudice if the automatic stay were lifted because the Deposit is not property of the Debtors’ estates, and (ii) the Galicians will be greatly prejudiced if they are unable to proceed with their claims in state court promptly.

¹ Although the Galician Motion does not set forth the amount of the Deposit, the Debtors believe that the amount is \$88,125 based on the proof of claim filed by the Galicians.