

Motion of Banc of America Leasing & Capital LLC for Order (A) Compelling Debtor WCI Communities, Inc. to Assume or Reject Lease Agreement and Schedules, or Alternatively, (B) Compelling Debtor to Make All Rent Payments, Late Fees, Tax Payments and Other Charges Under the Lease Agreements Due or to Become Due, Until Such Lease and Schedules are Assumed or Rejected Pursuant to § 365(D)(5) or, Alternatively, (C) Modifying the Automatic Stay (the “BALC Motion”)

By the BALC Motion, Banc of America Leasing & Capital LLC (“BALC”), successor by merger to LaSalle National leasing Corporation (“Lasalle”), seeks entry of an order (i) compelling Debtor WCI Communities, Inc. (“WCI”) to assume or reject the Lease Agreement and Schedules (as defined below) within ten days of the entry of such order, or alternatively, (ii) compelling WCI to make all rent payments, late fees, tax payments and other charges under the Lease Agreement and Schedules due or to become due, until the Lease Agreement and Schedules are assumed or rejected or, alternatively, (iii) modifying the automatic stay.

Pursuant to an August, 2003 master lease agreement (the “Lease Agreement”) between WCI and FNF Capital Inc. (“FNF Inc.”), (i) FNF Inc. leased equipment (the “Equipment”) to WCI and entered into separate equipment schedules (collectively, the “Schedules” and, together with the Lease Agreement, the “Agreements”), and (ii) WCI is obligated to make monthly rental payments (the “Monthly Payments”) to FNF Inc. In December, 2005, FNF Inc. assigned and transferred its assets relating to equipment leases, including the Lease Agreement, to FNF Capital LLC (“FNF”), retroactive to September, 2005.

On October 7, 2005, May 2, 2006 and February 6, 2007, WCI entered into Schedules with FNF for the lease of various pieces of equipment. Shortly after each Schedule was entered, FNF granted LaSalle a security interest in the Lease Agreement and each of the Schedules, rental payments, and other amounts payable thereunder after November 1, 2005, June 1, 2006, and March 1, 2007, respectively.

BALC maintains that WCI has failed to remit Monthly Payments due on the first day of December, 2008 and January and February, 2009, which constitutes an event of default under the Lease Agreement that can lead to (i) termination of the Agreements, and (ii) repossession of the Equipment. BALC further maintains that WCI continues to use the Equipment to generate income for WCI’s benefit without providing BALC with adequate protection for the harm caused to BALC by such use. Finally, BALC maintains that (a) WCI has neither assumed nor rejected the Agreements, and (b) WCI has not returned the Equipment to BALC or offered any adequate protection.

BALC asserts that the Agreements constitute unexpired leases of personal property and that WCI has had sufficient time to determine whether to assume or reject them. BALC further asserts that (i) if WCI assumes the Agreements, it should be directed to pay all arrearages within 10 days of the order approving such assumption, and (ii) if WCI rejects the Agreements, it should be directed to return the Equipment within 10 days of the entry of the order approving such rejection, and in any case, to pay the rentals and all other sums due and owing until such equipment is returned.

If the Court determines that it is premature to order WCI to assume or reject the Agreements, BALC maintains that the Court should order WCI to make all future rent payments, late fees, tax payments, and other charges under the Agreements as they become due until the Agreements are assumed or rejected.

Finally, BALC asserts it is entitled to relief from the automatic stay to take possession of the Equipment and to sell or otherwise dispose of same in accordance with the Agreements. BALC maintains that because WCI has failed to make the Monthly Payments, there is a lack of adequate protection of BALC's interest in the Equipment, which constitutes immediate and irreparable harm to BALC's interest in the Equipment. Furthermore, BALC asserts that the automatic stay should be lifted because WCI has no legal title in the Equipment, since the Agreements specifically provide that the Equipment remains the property of BALC.