

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

By the Legend Lift Stay Motion, Legend Yacht & Beach Club Homeowners Association Inc. (“Legend”) seeks entry of an order granting Legend relief from the automatic stay to continue and conclude the Arbitration (as defined below) and obtain an award to fix Legend’s claim against Debtor Spectrum Glen Cove Corp. Inc. (“Spectrum”).

Legend. Legend is a 47-home residential development (the “Development”) which was constructed and sold by Spectrum. The Development includes such amenities as (i) a 47-slip marina located on the Long Island Sound (the “Marina”) and (ii) common roadways, a privately operated site irrigation system, and other infrastructure and recreational facilities which are owned by Legend for the benefit of the individual homeowners (together, the “Infrastructure”).

The Settlement Agreement and the Arbitration. In order to resolve the claims that Legend asserted against Spectrum arising from, and related to, the allegedly unsatisfactory condition of the Marina, Legend and Spectrum entered into a Settlement Agreement, dated October 11, 2005, and effective in February 2006 (the “Settlement Agreement”). Under the Settlement Agreement, Spectrum (i) agreed, among other things, to install a new breakwater system, cap block system, and floating dock system at the Marina; (ii) expressly warranted that (a) it had obtained the necessary permits for the Marina reconstruction and (b) any work performed would be done in compliance with such permits; and (iii) made certain additional representations that, according to the Debtors, were contingent upon Legend’s fulfillment of certain conditions. For example, Spectrum represented that, provided Legend carried out the proper routine maintenance and repair protocols, the Marina would be free from material defects for at least ten years, and that Spectrum would pay to repair any material defects occurring within that time period.

According to the Debtors, in exchange, Legend agreed to, among other things, (i) release Spectrum from all of its claims against Spectrum relating to the Marina and the common areas of the Development; (ii) indemnify Spectrum; (iii) refrain from defaming Spectrum; and (iv) keep the terms of the Settlement Agreement confidential. The Settlement Agreement contains an arbitration clause requiring disputes relating thereto to be resolved by means of arbitration.

After consummation of the Settlement Agreement, substantial disputes arose between Legend and Spectrum when Spectrum allegedly: (i) failed to perform any of the renovations to the Marina; (ii) did not have the required permits to perform such renovations; (iii) failed to perform any renovations to the Infrastructure; and (iv) breached other substantial obligations under the Settlement Agreement ((i) through (iv) are hereinafter collectively referred to as the “Allegations”). As a result, on October 12, 2007, Legend commenced an arbitration proceeding (the “Arbitration”) seeking damages in excess of \$51,825,000, as well as declaratory relief concerning the rights and obligations of the parties under the Settlement Agreement, plus attorneys’ fees and costs.

Thereafter, Spectrum commenced unsuccessful actions in New York State Court to prevent the Arbitration from proceeding. Legend alleges that such actions were frivolous and designed to prevent Legend from obtaining an award in the Arbitration prior to the filing of Spectrum’s chapter 11 petition on August 4, 2008 (the “Petition Date”). Spectrum, however, asserts that

such actions were commenced because the Debtors did not believe that the Settlement Agreement required the Allegations to be resolved in the Arbitration.

Although the Arbitration hearings began in July 2008 with the testimony of certain witnesses, the Arbitration did not conclude and has now been stayed. Legend alleges, however, that prior to the Petition Date, the Arbitration was essentially completed with Legend resting its principle case subject only to its right to introduce additional evidence concerning the amount of damages attributable to Spectrum's alleged breach of the Settlement Agreement. The Debtors disagree and assert that the Arbitration is nowhere near completion.

Legend believes that cause exists to grant it relief from the automatic stay because lifting the automatic stay will permit Legend to proceed with the Arbitration and determine Spectrum's liability for its alleged breach of the Settlement Agreement. According to Legend, such a result is appropriate because (i) the arbitrator has developed a specialized knowledge of the Allegations and related defenses and (ii) it would facilitate the formulation of a confirmable plan of reorganization because the extent of Spectrum's liability would be determined and considered thereunder. Legend alleges further that the Arbitration would have been concluded prior to the Petition Date absent "willfully dilatory conduct of Spectrum and its counsel."