

Motion of Alan Stanley Freemond and Clarajohn Freemond for Relief from the Automatic Stay or in the Alternative, for a Finding that the Stay Does Not Apply (the “Freemond Lift Stay Motion”).

By the Freemond Lift Stay Motion, movants Alan Stanley Freemond and Clarajohn Freemond (together, the “Freemonds”) seek entry of an order authorizing them to proceed with a pending action (the “Florida Action”) in Florida Circuit Court (the “Florida Court”) against Robin H. Branson (“Branson”), Watermark Realty, Inc. d/b/a Prudential Florida WCI Realty, Inc. (“Prudential WCI”), and Glenn Goldstein (“Goldstein,” together with Branson and Prudential WCI, the “Remaining Defendants”).

BACKGROUND

On October 27, 2006, the Freemonds purchased a house (the “Home”) located in Palm Beach Gardens, Florida from Branson for \$4,375,000. The Home was constructed by Debtor WCI Communities, Inc. (“WCI”), and during the construction, Branson installed a precast stone façade (the “Façade”) on the Home. Title to the Home was initially held by a debtor subsidiary of WCI, Communities Finance Company, LLC (“CFC”), and CFC transferred such title to Branson in March 2005. At or about the same time, Branson leased the Home back to CFC for \$18,000 per month.

During such lease period, WCI used the Home as a model home at its Old Palm development in Palm Beach Gardens, Florida and Branson used the Home as a marketing tool for his Façade. Branson never lived in the Home. After acquiring legal title to the Home, Branson actively marketed it using Prudential WCI and Goldstein as brokers.

Soon after moving into the Home, the Freemonds discovered numerous problems with the Home, including, among other things, mold, flooding, leaks, contamination, and ventilation problems (the “Alleged Defects”). The Freemonds believe that many of the Alleged Defects were caused by water intrusion through the Home’s building envelope due to the fact that the Façade is not watertight. The Freemonds maintain that the Alleged Defects are so extensive and severe that the Freemonds were unable to repair the damage, and they were forced to move out of the Home because it was uninhabitable. The Freemonds allege that Branson, WCI, Prudential WCI, Goldstein and CFC (together, the “Defendants”) (i) were aware of the severity of the Alleged Defects before the Freemonds purchased the Home, (ii) never disclosed the Alleged Defects to the Freemonds, and (iii) actively concealed the Alleged Defects from the Freemonds.

PROCEDURAL HISTORY

On May 17, 2007, the Freemonds filed the Florida Action against the Defendants. On June 11, 2008, the Florida Court dismissed WCI and CFC as parties to the Florida Action. On June 26, 2008, Branson filed a third-party complaint against WCI and CFC seeking indemnification for any liability Branson may have to the Freemonds in the Florida Action. Upon the filing of a Suggestion of Bankruptcy by WCI and CFC on August 11, 2008, the Florida Court stayed all proceedings in the Florida Action. The Freemonds seek to proceed with the Florida Action against the Remaining Defendants.

BASIS FOR RELIEF

The Freemonds assert that the automatic stay (the “Stay”) should not stay the Florida Action because the Florida Action is not against any of the Debtors or property of the Debtors’ estates. The Freemonds further assert that any right of indemnification Branson might hold against the Debtors does not implicate the Stay because (i) such potential indemnification right does not create an identity of interest between the Debtors and Branson such that the Debtors would become the real party in interest in the Florida Action and (ii) even if the Freemonds prevail against the Remaining Defendants, Branson’s indemnification claims may still fail.

To the extent that the Stay applies, the Freemonds assert that it should be lifted to allow the Florida Action to proceed immediately. First, the Freemonds assert that the Florida Action should be adjudicated in the Florida Court because (i) the Bankruptcy Court would not be able to hear the Florida Action since the Florida Action would be subject to mandatory abstention pursuant to the U.S. Code, (ii) equities and judicial economy weigh in favor of allowing the Florida Action to proceed in Florida since the parties, witnesses, documents, and attorneys familiar with the case are all in Florida, and (iii) any adjudication of the Freemonds’ claims in the Bankruptcy Court would be subject to *de novo* review by the District Court since it is a non-core matter. Second, the Freemonds assert that the Florida Action should be allowed to proceed immediately because (i) the prejudice of a delay in the Florida Action to the Freemonds outweighs any prejudice to the Debtors’ estates, (ii) relevant evidence will become more difficult to obtain over time, and (iii) the dispute is immaterial in relation to the size of the Debtors’ estates. Finally, the Freemonds assert that they are likely to succeed on the merits in the Florida Action since there is no reasonable dispute that (i) the Home is uninhabitable due to the Alleged Defects and (ii) the Remaining Defendants knew of the Alleged Defects and failed to disclose them to the Freemonds.