

Update Regarding Fiddler's Bankruptcy Proceedings

A hearing was held on Wednesday, April 14, 2010 on multiple matters before the Bankruptcy Court. Judge May heard the matter in place of the presiding Judge, Judge Paskay, who has been ill. It is not clear whether Judge May will continue as the presiding judge, or whether Judge Paskay will resume his duties on the case.

A number of miscellaneous motions were heard and resolved by the Court, prior to any discussion on continued DIP financing. The Court approved the retention of the Debtors' bankruptcy counsel, special counsel, counsel for the unsecured creditors' committee, the Debtors' accountants and "ordinary course" business professionals. The court granted the creditors' committee, the CDDs and other creditors an additional ten (10) days to object to retention of Moelis, an investment banking firm. Additional time is needed to review the Moelis retention package, which includes provisions for payment of a \$125,000 monthly flat fee payment. The court further granted a motion regarding the "protocol" for the creditors' committee to release confidential or privileged information shared with it by the Debtors.

The Court further extended the deadline to file proofs of claim in all the Debtors' 28 cases through June 30, 2010. Each creditor is required to file a separate claim in each bankruptcy case in which it may assert or hold a claim.

The Court did not establish a finite date by which the Debtors must file a plan of reorganization, but indicated that it would be setting a status conference before June 23, 2010, at which time a date may be fixed.

The Court heard but denied certain lenders' requests for reconsideration and denial of the initial interim DIP financing order. The denial was without prejudice to their right to object to subsequent advances or further interim or final order relating to DIP financing.

A number of interim resolutions with lenders and creditors related to the DIP financing were announced, including an agreement with the Fiddlers Creek CDDs. The Debtors agreed to increase the budget for the next 7-week interim period by \$45,000, which funds are necessary and allocated for payment of anticipated shortfalls in the budget for O&M in CDD II. The CDDs preserved all prior objections and all rights to make additional objections to any further or final order on DIP financing. Such objections are anticipated if there is not an increase in funding to the CDDs, particularly with respect to O&M Assessments.

The creditors' committee also agreed to further interim financing for a 7-week term, without waiver of objections. Among other things, the unsecured creditors have concerns regarding deficit funding for homeowners' associations and certain negative covenants in the DIP facility, which require the Debtors to meet high sales targets before certain payments are allowed under the facility (including Debt Assessments). They further question an 18-month term of the DIP loan, given concerns over feasibility of reorganization.

While an evidentiary hearing on further objections to the DIP facility was anticipated, much of the Court and parties time and attention revolved around the Debtors' motion to approve certain sales of homes in the community. The sale motion was filed the morning of the hearing and none of the creditors had an opportunity to review it. Nevertheless, the topic became a central focus of the hearing when Regions bank (which opposed the DIP facility), evidenced a willingness to agree to further DIP financing based upon terms tied to the disbursement of sales proceeds of the homes. By tying resolution of its DIP objection to the sales motion, the Debtors and other interested parties urged the court to shorten notice and immediately approve the home sales motions for the alleged benefit of the estate.

Both the CDDS and counsel for the Trustee of the Bondholders objected to the lack of notice and opportunity to consider the details and ramifications of the sale motions. The creditor body, including the Unsecured Creditors' Committee argued that approval of the sales was important to give prospective buyers and current owners confidence in the sales process, essential to any successful reorganization.

Although securing funds for the estate and repayment of unpaid assessments at closing favors the CDDs, the bondholders insisted on further time to evaluate whether past due (i.e. 2009 only) or "accelerated" amounts were due for the on roll assessments. Even if the CDDs are not entitled to payment of the accelerated amounts for the on roll assessments, the bondholders further objected to the fact that the deal negotiated by the Debtors and Regions as being overly favorable to the parties and providing nothing to the CDDs for reduction of the Debt Assessments. Under the Regions/Debtor settlement, each would split "net proceeds," (i.e. remaining proceeds after deduction for the cost of sales including taxes, CDD assessments and closing costs) 50-50.

After much debate and attempts to resolve the matter by negotiation, the Court tentatively approved sale of the homes, but not the disbursement of the proceeds. The CDDS and bondholders have ten (10) days from entry of the sale order to object and have preserved for further hearing questions related to disbursement of the sales proceeds. The CDDs have been coordinating with counsel for the Trustee, the districts' manager and lien roll preparer regarding pending issues.

Based upon communications with counsel for the Trustee and other individual bondholders, it is anticipated that the CDDs may be instructed to pursue objection to the sales and may in the future be requested to pursue stay relief, which rights were expressly preserved at the hearing. Further hearing on the DIP financing is scheduled to take place in Tampa, on Friday, June 4, 2010.

Counsel for the CDDs has requested that in advance of the hearing, the Trustee and its counsel meet with the CDDs and their counsel to discuss strategies and positions regarding the DIP financing, future sales, potential requests for stay relief (even if limited to permit the foreclosure process to proceed up to judgment) and resources that may be needed to achieve strategic objectives.