

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FREDERICK L. FELDKAMP and
JUDITH L. FELDKAMP,

Plaintiffs,

v.

CASE NO.: 2:09-CV-253-FIM-29SPC

LONG BAY PARTNERS, LLC, a
Florida limited liability company,

Defendant,

**PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER OR, ALTERNATIVELY, TO APPOINT RECEIVER
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiffs Frederick L. Feldkamp and Judith L. Feldkamp ("Plaintiffs"), by their undersigned counsel, Ruden, McClosky, Smith, Schuster & Russell, P.A., file this motion, pursuant to Federal Rules of Civil Procedure 65 and 66, for a temporary restraining order or, alternatively, to appoint a receiver, and memorandum of law in support.

INTRODUCTION

Plaintiffs bring this motion because it is the only means by which Plaintiffs can protect themselves (and more than 882 similarly situated creditors of Long Bay Partners, LLC ("Defendant"), and its affiliates). Defendant ceased paying admitted obligations to refund deposits of Plaintiffs and others (collectively, "Depositors") more than a year ago, on November 7, 2008. Defendant has likewise admitted that it is unable to pay its maturing debts and is liquidating. In a deposition that became available November 13, 2009, Defendant acknowledged a consistent and longstanding practice whereby Defendant has diverted all of its

liquid assets to the detriment of acknowledged priority claims of Plaintiffs and other Depositors. Defendant announced its intention to preclude collection by unpaid Depositors.

As explained fully below, Plaintiffs can only be protected from loss if each and every of the similarly situated Depositors are likewise protected. Defendant is about to receive \$6.8 million from the liquidation of a portion of its remaining assets, which proceeds should be applied to the payment of Depositors. Plaintiffs bring this motion to preclude Defendant from wrongfully diverting that money, pending determination of the parties' and other Depositors' rights.

BACKGROUND

Plaintiffs filed this action on June 29, 2009, to collect a deposit that Defendant owes Plaintiffs but failed to pay when the deposit became due in April, 2009 (Dkt. 22). Defendant has asserted that it could amend its liability to pay the deposits at issue, at will. If Defendant can unilaterally amend the deposit, as stated in the answer (Dkt. 27) and motion to dismiss (Dkt. 28), then the deposit contract is illusory as a matter of law and Defendant is liable to Plaintiffs by virtue of Defendant's unjust enrichment. If the deposit is not subject to unilateral amendment, then Defendant is in breach of its refund obligation and owes Plaintiffs both the deposit and the amount of all damage Plaintiffs suffered as a result of Defendant's breach.

On September 4, 2009, Plaintiffs moved for summary judgment (Dkt. 33) based on Defendant's unjust enrichment by the receipt of benefits from Plaintiffs' deposit totaling \$92,000, under an illusory contract theory. Defendant responded by falsely asserting that since it was a "club" it was allowed to, and did, amend the deposit liability unilaterally. That curious and circular response was supported by a September 24, 2009, sworn Declaration of David

Lucas, Chairman of Defendant's sole "Managing Member" and, therefore, the one person with full management authority to bind Defendant (the "Declaration").

Eleven days later, on October 5, 2009, Lucas gave a deposition (the "Deposition") in one of the many related cases about which Defendant has previously advised the Court.¹ By the Deposition, Lucas freely admits that Defendant owes Plaintiffs under **all** theories stated in the amended complaint. Moreover, the Deposition impeaches Lucas' own earlier Declaration.

Specifically, Lucas admits the following in the Deposition:

- Defendant regarded the agreement as **completely** amendable at its sole discretion. (Deposition, 43:5-24; 74:3; 75:19; 291:25 through 294:4).
- Strangely, however, though Mr. Lucas spent **17 straight minutes** looking through the rules and regulations for a section he "thought" allowed Defendant to change the agreement, as it related to the refund of the Plaintiffs' deposit, he admitted that no such section or language existed. (Deposition, 294:5-20).
- Rather, the agreements contain "unconditional" deposit repayment terms. When asked "What does an unconditional agreement mean to you?" the deponent answered "Means that it can't be changed." (Deposition, 9:9).
- "Membership in the club" is distinguished from the "deposit." A "membership" is what a "member" receives in exchange for the "deposit." (Deposition, 249:23).
- The deposit was regarded and recorded by the Defendant, in the case of all its clubs, as a "loan" from members to Defendant. (Deposition, 249:24, *et al*).
- "Membership" is the right to use Defendant's property that the member obtained in exchange for the deposit. "Membership" is "only...a revocable license to use the Club Facilities that are not just "operated" by Defendant for members, they are "owned by Long Bay Partners", in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and the Application for Membership." (Deposition, 41:57 and 125:9-14).

¹ A copy of the Deposition was filed with the Court on November 20, 2009 (Exh. A, Supplement to Motion for Partial Summary Judgment with Respect to Counts I and III of the First Amended Complaint, Dkt. 40). The transcript of that Deposition did not become available to the public (and Plaintiffs' counsel) until November 13, 2009.

- Defendant admits the “deposit” is a “loan” and that “instant refundability” of the loan was its intent. (Deposition, 33:8 through 35:23).

The terms of all contracts are admitted by the parties. Thus, the only question remaining for resolution by this Court is legal interpretation. In light of the Deposition and the plain meaning of the contract terms, that issue should be easily resolved in Plaintiffs’ favor as a simple matter of law.² Though Plaintiffs’ legal entitlement to repayment seems nearly unavoidable, Plaintiffs, and the hundreds of Depositors like them, will likely never collect this debt without immediate action by this Court.

FACTS SUPPORTING EXTRAORDINARY RELIEF

Upon information and belief, on December 2, 2009, the Defendant is scheduled to sell the “club facilities” known as The Club at Mediterra (“Mediterra”), to a group of members that agreed to pay Defendant \$6.8 million of cash. A true and correct copy of the November 19, 2009, Member and Resident Update for the Club at Mediterra is attached as **Exhibit “B.”** Plaintiffs and other Depositors have no objection to that sale, but they have valid reasons for

² While the Declaration and the Deposition, both of which purport to speak for Defendant, are themselves at odds, there are, in fact, **no** terms of the contracts which even arguably suggest Defendant can amend its obligations to pay the deposit in any manner. Indeed, an electronic search of the contracts at issue confirms there is no paragraph anywhere in the contracts in which the terms “amend” (or “amendment”) and “deposit” appear together. Defendant is permitted to amend the “revocable license” to “use” Defendant’s “club facilities” that is “membership,” the admitted *quid pro quo* for making a “deposit,” but all terms relating to repayment of the deposit when “membership” ends are, by the contracts, unconditional, irrevocable and not amendable.

There is, moreover, no legal authority that would permit an admitted debtor to unilaterally amend its obligation to pay its debt. Each and every “defense” Defendant has stated in this case has now been rejected by a November 18, 2009, ruling granting another depositor summary judgment, in Glenn and Carole Bolles v. Long Bay Partners, d/b/a The Club at Mediterra, Case No. 09-4357-CA, in the Circuit Court of Collier County, Florida. The circuit court granted summary judgment against the Defendant based on facts, documents and arguments that are identical in all material respects to those presented in plaintiffs’ motion for summary judgment here. A copy of the transcript of that hearing will be provided to the Court when it is available. A true and correct copy of the docket in that case, reflecting the minute entry reflecting that the motion was granted, is attached as **Exhibit “A.”** The brief of plaintiffs in that case was previously filed with this Court (Dkt. 40).

The assertion by Defendant that it can unilaterally amend its deposit repayment liability is frivolous and entirely spurious. It is not supported by any law, any term of the contracts or by any conceivable argument for extending, modifying, or reversing existing law or for establishing new law.

concern that the Defendant will dispose of the sale proceeds in a manner that will hinder, delay or prevent recovery of that money for the rightful purpose of paying debts that are now admitted by Defendant to be due to Plaintiffs and other Depositors. Because these proceeds will flow from the liquidation of a large portion of Defendant's remaining assets, Plaintiffs seek an injunction to mandate that the entirety of the proceeds (and all proceeds of any other real estate and "club facility" sales by Defendant), be protected and preserved until the Court is able to decide the rights and priorities of Defendant's creditors.

Although Plaintiffs are only one of more than 100 Depositors with payments that are now due (or that will become due on the sale of Defendant's assets) the relief requested by this motion is necessary to protect Plaintiffs. That is because no one depositor can expect, based on Defendant's admitted actions, to collect their debt in full at this point unless every member that seeks payment collects their deposit.³

Public records confirm that Defendant was one of the most profitable and successful residential real estate developers in Southwest Florida. The Deposition confirms that Defendant is now insolvent by virtue of a flagrant practice by which Defendant was systematically stripped of assets, which were transferred to the sole and exclusive benefit of the Deponent's wife and her sister. Upon information and belief, between land sales and "member" deposits, Defendant appears to have generated more than \$700 million of cash and to have incurred no more than

³ As a consequence of preferential transfer rules in bankruptcy, Plaintiffs can only be assured recovery if Plaintiffs act now to protect all Depositors before funds are dissipated. It is only if there are sufficient funds for the payment of all Depositors that Plaintiffs can recover in full. Even if Defendant preserved assets sufficient to satisfy a \$100,000 judgment in favor of Plaintiffs, Plaintiffs would never collect the full judgment, unless all members collected their full judgments, because the payments would be treated as preferences (11 USC §547). For example, if there are \$10 million of claims and this Court awards (and Defendant pays) \$100,000 to Plaintiffs, and Defendant dissipates all other proceeds of asset sales, Plaintiffs would be allowed to keep no more than \$1,000 of the Court's judgment in the inevitable bankruptcy proceeding. By the same math, Plaintiffs would be entitled to retain up to \$68,000 of a \$100,000 judgment if the motion for a preliminary injunction is granted (or a receiver is appointed) and proceeds of the December 2, 2009 sale of the Club at Mediterra are preserved.

\$120 million of liabilities to Depositors. Though planned as projects that would take perhaps a decade to build and sell, Defendant sold substantially all of its assets rapidly, and long before the real estate “bubble” burst. Had it conducted business with a view to its debt to Plaintiffs and others like them, as required by law, it is inconceivable that Defendant would now be unable to pay its debts.

The Deposition reveals, however, that Defendant is (and perhaps always has been) insolvent by virtue of a perpetual practice of transferring all liquid assets (perhaps \$700 million or more) to other firms owned by the wife of the Deponent and her sister, the owners of Defendant. Each such transfer rendered Defendant incapable of repaying its liabilities as they became due.⁴ While all such transfers are, therefore, subject to avoidance and recovery under the Florida Uniform Fraudulent Transfer Act, it appears the transferees may have placed the assets beyond reach of Depositors. As a consequence, the sole source of funds for repayment of Depositors may be the proceeds of pending sales of remaining lots in one of Defendant’s developments and “club facilities” relating to its developments known as Mediterra and Shadow Wood Country Club.

Upon information and belief, some Depositors, like Plaintiffs, resigned in response to Defendant’s announced (November 7, 2008) breach of its irrevocable “instant refundability” program. Others have been terminated or have downgraded “memberships” and are, therefore, equally entitled to immediate repayment by the contracts under which Defendant solicited their deposits. Others have refused to consent to membership terms offered by new “clubs” that are

⁴ Defendant may assert that consideration was paid or that its ability to recover such assets precludes a finding of insolvency. That is the case if Defendant made transfers to independent creditors or invested in independent enterprises. In this case, however, the Deponent admits that the transfers were to affiliates owned by his wife and her sister. So, it would only be possible for Defendant to pay its deposit liabilities after such transfers if the Deponent, his wife and her sister agreed to fund such payment. They are insiders, not independent parties. To the extent Defendant must rely on the largess of shareholders and insiders for recovery, it is and has been insolvent since the practice described in the Deposition began.

purchasing Defendant's "club facilities." By the same contracts, all such non-consenting members are required to be paid upon sale of those facilities.

As a result, at least 125 Depositors, with claims totaling more than the \$6.8 million that Defendant is scheduled to be paid December 2, 2009, are at risk of irreparable harm if this Court does not intervene.

The Deposition reveals Defendant's total disregard for depositor's rights as creditors (Deposition, 39:21 to 40:16, 41:1-17, 41:21 to 42:3 and 42:7-10). The agent hired by one of Defendant's affiliates to negotiate sales of the "club facilities" has actually announced, on behalf that affiliate, the intention to see that Depositors now seeking payment are **never** paid (Deposition, 168:17 to 169:2).

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER REGARDING USE OF THE FUNDS OR, ALTERNATIVELY, TO THE APPOINTMENT OF A RECEIVER, PENDING RESOLUTION OF THEIR CLAIMS, BECAUSE THE BALANCE OF THE APPLICABLE FACTORS WEIGHS HEAVILY IN FAVOR OF PLAINTIFFS.

It is axiomatic that Plaintiffs are entitled to injunctive relief upon a showing that: (a) a substantial likelihood of success on the merits; (b) irreparable injury if injunctive relief is not granted; (c) such injury outweighs any damage which granting injunctive relief would inflict upon the defendant; and (d) the public interest will not be adversely affected by granting the injunction. Merrill Lynch, Pierce, Fenner, & Smith v. Hagerty, 808 F. Supp. 1555 (S.D. Fla. 1992).

Similarly, the Eleventh Circuit has approved the following six-factor balancing test for determining whether to appoint a receiver: (1) the inadequacy of available legal remedies; (2) the plaintiff's probable success in the action and the possibility of irreparable injury to his

interests in the property; (3) the imminent danger that property will be lost or squandered; (4) the probability that harm to the plaintiff by denial of the appointment would be greater than the injury to parties opposing appointment; (5) whether the interests of the plaintiff and others sought to be protected will in fact be well served in the receivership; and (6) any fraudulent conduct on the part of defendant. See Motion Dynamics, Inc. v. Nu-Best Franchising, Inc., 2006 WL 1050639 at *6 (M.D. Fla. April 20, 2006) (citing Nat'l Partnership, 153 F.3d at 1291). Each factor is simply "one of several factors a court may consider and [every factor] need not necessarily be present in order for a receiver to be warranted." JPMorgan Chase Bank, N.A. v. Heritage Nursing Care, Inc., 2007 WL 2608827 (N.D. Ill. Sept. 6, 2007) (citing 12 Charles Alan Wright, Arthur R. Miller, and Richard L. Marcus, Federal Practice and Procedure: Civil 2d (hereinafter "Wright & Miller") § 2983 at 24-29).⁵ The appointment of a receiver by a federal court is governed by federal law. See National Partnership Investment Corp. v. Nat'l Housing Devel. Corp., 153 F.3d 1289, 1292 (11th Cir. 1998). A district court is afforded great deference with respect to a decision to appoint a receiver, which will only be disturbed upon a finding of an abuse of discretion. See id.

Because the factual and equitable considerations of the injunctive and receiver factors overlap, it is logical and efficient to analyze both simultaneously. Applying the six factors noted by the Eleventh Circuit in Motion Dynamics, *supra*, factors (2), (3) and (6) (probable success, imminent danger of asset dissipation and fraudulent activity), are admitted in the Deposition. The remaining factors, inadequacy of available legal remedies, the probability of harm that outweighs the possibility of harm to Defendant or others and whether relief will, in fact, protect Plaintiffs, are also present, as discussed in more detail below.

⁵ Like this Court and the Eleventh Circuit, federal courts have generally all embraced the set of factors discussed in Wright & Miller in analyzing the propriety of a receiver appointment. Thus, Plaintiffs also rely throughout this memorandum upon authorities from various other federal courts, applying these same factors.

A. Plaintiffs Are Not Adequately Secured and, Therefore, Lack an Adequate Remedy at Law.

Lucas admits Defendant owes Plaintiffs their deposit and that Depositors are senior in claim to rights of himself and his family. Defendant's non-member creditors are banks and the wife and sister of Mr. Lucas, the owners of Defendant. Lucas is an indirect creditor in that any payment of bank debt by Defendant reduces obligations he would have to pay if letters of credit that he provided are called by the banks. Any attempt to use these sale proceeds to pay those creditors in advance of the member creditors would contravene Depositors' rights. As noted in the Deposition (Deposition, 180:7-11 and Deposition Exh. 18, p. 2), Defendant's banks have asserted no rights that are prior to Depositors. Indeed, the mortgage by which those banks claim rights to Defendant's real estate contains a provision which makes the banks rights on sale "subject to" the rights of club members (Depositors). See September 4, 2009, Affidavit of Frederick L. Feldkamp, Exh. 2, p.19, ¶ (e). Lucas further notes that all rights of his family are subordinate to those of Depositors (Deposition, 256:1-9) and that Lucas himself has supported the mortgage with a letter of credit by which his assets will be used to pay the mortgage if the banks are unable to otherwise recover their loans (Deposition, 185:5-12). Under applicable bankruptcy law, by contract and in equity, therefore, the banks are subordinate in interest to the rights of Depositors. Taylor v. Standard Gas & Electric Co., 306 U.S. 307 (1938); U.S. v. Tabor Court Realty Corp., 803 F. 2d 1288 (3rd Cir. 1989); Levit v. Ingersol Rand Financial Corp. (in re V. n. Diprizio Construction Co.), 784 F. 2d 1186 (7th Cir. 1989). Defendant admits that it cannot satisfy its debts to Depositors as they have matured.

Nevertheless, Defendant is selling assets and making no provision for the payment of its first priority debts, to Depositors. In fact Defendant has announced the intent **not** to pay Depositors (presumably because Lucas has personally provided security to the banks, and

therefore intends to pay them first, Deposition 185:8-12). Since the banks' rights are, by law and contract, subordinate to Depositors', such actions mean that Depositors are not secure in the absence of relief.

Plaintiffs are but one of many deposit creditors seeking repayment of the Defendant's debt. By way of this motion, Plaintiffs seek protection from the injury that will result if Defendant depletes or otherwise mismanages its assets before Plaintiffs can obtain and recover on that judgment. JPMorgan Chase Bank, 2007 WL 2608827, at *10 (recognizing, for purposes of this factor, distinction between at law nature of ultimate relief sought in lawsuit and equitable relief sought by interim motion). Plaintiffs are aware of no remedy at law which would achieve the interim objective of preserving the Defendant's assets so that Plaintiffs and all other Depositors can be assured relief, other than an injunction or the appointment of a receiver.

B. Plaintiffs Have a High Probability of Success on the Merits by Virtue of a Now Undisputed Debt.

Defendant admits that it and its affiliates owe \$15-16 million in deposits to more than 800 members (Deposition, 181:21-24). Defendant likewise admits that it has failed and refused to honor the debt owed to its own Depositors. Defendant cannot assert any real defenses to Plaintiffs' claims in this case as the Deposition establishes and as has been argued in detail in Plaintiffs motion for summary judgment and herein.

C. Defendant Has Already Admitted to a Pattern of Asset Stripping.

By the Deposition, Defendant admits that it and its affiliates have diverted as much as \$300 million in deposit moneys and Defendant appears to have diverted as much as \$700

million⁶ in total. Deposits are now being called due and, absent relief, Plaintiffs and others now merely stand in a long line to await their share of nothing. As noted above, Plaintiffs cannot rely on retaining payments they receive at this point without assuring that all Defendant's deposits are paid.

Plaintiffs have no assurances, and no immediate means of obtaining assurances, that the proceeds of the sale of the Mediterra assets will be properly maintained, if maintained at all. As noted, an agent acting on behalf of Defendant has actually stated that he intends that Depositors will receive nothing (Deposition, 168:17 to 169:2).

Thus, a receiver or an injunction should be put in place to ensure that appropriate efforts are being undertaken to protect the sale proceeds, given Defendant's admitted failure to preserve Plaintiffs' and other's deposits in the first place.

D. Plaintiffs Are Entitled to the Appointment of a Receiver Because the Balance of Potential Harm to the Parties Favors the Appointment.

Here, as discussed above, given Defendant's admitted past conduct, and its admitted inability to meet its debts as they mature, the risks to Plaintiffs of not awarding interim equitable relief far exceed any prejudice or hardship that might be suffered by Defendant or other creditors as a result of restraining disposition of sale proceeds or a receiver's appointment. Neither the proposed remedy of a restraining order on, nor appointment of a receiver over, the application of sale proceeds, impairs the completion of any such sales or restrains the use of operating revenue generated by Defendant to meet its operating needs. Defendant cannot claim prejudice given its express admission of liability and of the Depositors' priority over other creditors. Equitable

⁶ Public records in Lee and Collier Counties indicate that Defendant received more than \$600 million in asset sales and Defendant has raised more than \$100 million of deposits from members, yet it has no cash because Lucas admits in the Deposition that all cash was transferred to an affiliate owned by his wife and her sister, and not returned as needed to pay Defendant's debt.

relief is necessary, therefore, to protect the admitted priority rights of members as Depositors and creditors of Defendant.

Plaintiffs do not, at this time, seek payment to themselves. Accepting payment without assuring recovery for other Depositors means that whatever Plaintiffs receive is subject to partial or full forfeiture in the anticipated bankruptcy of Defendant, unless all Depositors are protected. It is only by obtaining equitable relief, which assures the maximum resources for payment to all of Defendant's Depositors, that Plaintiffs will succeed in recovering the debt it is owed by Defendant.

II. DEPOSITORS ARE, AS A MATTER OF LAW, PRIOR IN RIGHT TO ALL ASSETS OF DEFENDANT AND ENTITLED TO PROTECTION FROM FURTHER ACTS OF DEFENDANT THAT THREATEN THEIR RIGHTS.

By the admissions of Defendant contained in the Deposition, Depositors' rights in this case have priority over all other interested parties (Defendant's owners and bank creditors) under two seminal decisions of the United States Supreme Court that established fundamental principles of equity, which apply to all matters affecting the rights of creditors and on which the U.S. Bankruptcy Code rests. Taylor v. Standard Gas & Electric Co., 306 U.S. 307 (1938) ("Deep Rock Oil") and Pepper v. Litton, 308 U.S. 295 (1939).

As in Deep Rock Oil, this Defendant is insolvent by virtue of owing an enormous amount of money to its owners (the wife of Mr. Lucas and her sister) and "because of the abuses in management due to the paramount interest of interlocking officers and directors in the preservation of [the owners']...as at once proprietor and creditor" of Defendant. 306 U.S., at 323. As a consequence, the "instrumentality rule" of Deep Rock Oil applies in this case "to preclude the allowance of [the owners']...claim in any amount." 306 U.S., at 322.

The Deposition, moreover, demonstrates the continuing intent of Lucas, and the consultants which have been engaged by him to manage Defendant, to ignore these fundamental principles and to divert Defendant's assets to the reduction of bank obligations supported by Lucas and to the detriment of Depositors.

Therefore, Plaintiffs are entitled to protection and pray that the Court will grant such relief as may be appropriate to assure that Plaintiffs' rights, and those of all other Depositors, in and to the few assets which remain as property of Defendant that will be preserved to pay their debts.

/s/ Deborah H. Oliver

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on the 30th day of November, 2009, we electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all parties of record.

/s/ Deborah H. Oliver

Attorney



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Case Information	Printer Frien
Style: BOLLES, GLENN vs LONG BAY PARTNERS LLC	
Uniform Case Number: 112009CA0043570001XX	Filed: 05/18/2
Clerks Case Number: 0904357CA	
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Case Status: OPEN	Reopened:
Next Court Date:	Reopen Close:
Last Docket Date: 11/17/2009	Appealed:

Parties Dockets Events Financials

1 of 1 pages. Entries per

Date	Text	All I
05/18/2009	CORRESPONDENCE FROM COUNSEL TO CLERK	
05/18/2009	CIVIL COVER SHEET	
05/18/2009	PAID \$10.00 PER ISSUANCE OF SUMMONS \$10.00	
05/18/2009	SUMMONS ISSUED LONG BAY PATNERS LLC DBA THE CLUB AT MEDITERRA/HANDED TO PLAINTFFS ATTORNEYS COURIER	
05/26/2009	AFFIDAVIT OF SERVICE OF SUMMONS LONG BAY PARTNERS LLC DBA THE CLUB AT MEDITERRA 05/21/09	
06/11/2009	ANSWER & AFFIRMATIVE DEFENSES BY LONG BAY PARTNERS LLC	
06/18/2009	CORRESPONDENCE FROM COUNSEL TO CLERK	
06/18/2009	MOTION FOR ADMISSION PRO HAC VICE BY CHRISTOPHER R GROTE	
06/19/2009	ORDER GRANTING MOTION (VERIFIED) FOR ADMISSION PRO HAC VICE CHRISTOPHER R GROTE IS ADMITTED PRO HAC VICE FOR PLAINTIFFS S/HAYES 6/19/09	
06/19/2009	CORRESPONDENCE FROM COUNSEL TO JUDGE WITH ATTACHMENT	
06/22/2009	PAID: 100.00 PRO HAC VICE BY QUARLES & BRADY	
07/31/2009	NOTICE OF FILING AFFIDAVIT	
07/31/2009	MOTION FOR SUMMARY JUDGMENT	
07/31/2009	AFFIDAVIT OF GLENN BOLLES	



08/18/2009	NOTICE OF HEARING 11/17/09 11:00 SUMMARY JUDGMENT
11/12/2009	MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT
11/12/2009	NOTICE OF FILING AFFIDAVIT OF DAVID LUCAS
11/12/2009	AFFIDAVIT OF DAVID LUCAS
11/17/2009	MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT PLAINTIFFS
11/17/2009	CORRESPONDENCE FROM COUNSEL TO JUDGE
11/17/2009	MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT
11/17/2009	ATTORNEY'S FOR BOTH PARTIES PRESENT, MOTION FOR SUMMARY JUDGMENT - GRANTED
11/17/2009	MINUTES - HEARING SEE SCHEDULE MINUTES FOR DETAILS

Wednesday night is regular maintenance time on our servers; as a result brief outages may occur.
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**The Club at Mediterra
Advisory Board Update**

**The Advisory Board for the Members of the
Club at Mediterra**

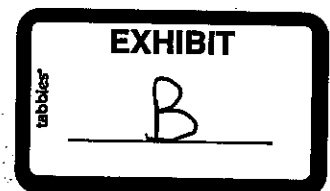
November 19, 2009

Member and Resident Update

Latest Counts

We are very pleased to report that membership in our New Club has continued to rise steadily. We now have **381 golf members, 88 Sport Members** (a reduction from the last reporting due to upgrades to golf), and **157 Social Members**.

This is a powerful statement about the cohesion and mutual support among the Mediterra members and residents who have made all this happen. This message has not been lost on the Real Estate markets. There has been a sharp spike in demand for Mediterra properties ever since we made the announcement that we had agreed to a deal. This is precisely the effect that we hoped we could have on the property values and liquidity of real estate in our community.



Just since our last update to you describing the options ahead for those who had not yet joined, we have had a spate of new joiners and rejoiners.

Our challenge now is to turn our attention to the serious business of re-establishing and operating one of the finest private clubs in Florida. There are many gifted and talented people in our community with valuable experience who could help us attain this goal. There is much work ahead of us, and important committee assignments to fill, and we hope you will give some serious thought to lending us your time and talent to make Mediterra the club we all want it to be.

Transaction Closing and Related Issues

We have now agreed to the date of Wednesday, December 2, to complete the closing formalities necessary to assume member ownership of the Club at Mediterra. All of the efforts of the Advisory Board, BBG, and our attorneys are focused on completing the tasks remaining to meet this deadline we have set for ourselves.

Buying the club is a complex transaction. It has involved the following subjects among others:

- the assumption, modification, or new structure for dozens of contracts for equipment, services, employees, and software
- a final survey clearly defining the boundaries of the property we are buying since we are adjacent to other property owned by the HOA, the CDD, RCS (the irrigation water supplier), and preparing proper easements for any and all encroachments that may exist
- preparation of Human Resource Management programs and policies to manage all the employees we will be assuming to run the New Club
- establishing bank accounts and credit lines
- transferring all applicable licenses, trademarks, names, labels, etc.
- hiring replacements for BBG employees laid off in the last 6 months
- preparing the Beach Club to reopen
- preparing to reopen the second Golf course
- preparing detailed operating budgets for 2010

There is a lot more, but you get the idea.

Court Ruling

You may have heard of a recent court ruling in favor of a former member who has pursued litigation against Bonita Bay Group for recovery of his resignation refund. Neither we, nor BBG, nor our attorneys anticipate that this will have any effect on our December 2 closing.

The ruling was a verbal order to be followed up by a written order. BBG has rejected an offer of settlement from the plaintiff, and is going to appeal the ruling. The ruling applied to a non-resident former member with contractual language quite different from what resident members have. The expectation is that BBG will have 70 days to file an appeal, and the appeal hearing is likely to be a year away.

Billing and Dues

As you know, BBG issued invoices near the end of October that included dues for the month of December. Most of you have already paid that invoice. Virtually all of those collected dues for December will be turned over to the New Club at closing on December 2.

BBG will be issuing no further invoices. In early December, shortly after closing, the New Club will issue invoices for dues for the month of January. Those invoices will be payable to the New Club by January 1, 2010. As you know, the New Club will operate on a semi-annual dues billing cycle on February 1 and August 1 of each year. Our fiscal year end will be July 31.

The first semi-annual dues invoice will be issued in early January. All adjustments will be reflected in that first semi-annual billing due February 1. Adjustments include credits for Sport Recap Fee overpayments, APF overpayments or underpayments, dues arrearages, and others.

Club charges will continue to be billed on a monthly basis.

Beach Towels

As you all know, we had earlier decided that the Club would no longer provide Beach Towel service due to the expense and exceptionally high number of lost towels. Many of you sent in numerous constructive suggestions for procedures we might adopt that would allow us to maintain this service at a reduced cost and reduced towel losses. The new House Committee has already taken these suggestions under advisement and is studying ways to do just that. We hope to hear the results in the near future. But it looks like Beach Towel service will survive.

Governance

The governance of the New Club will be a major factor in assuring the success, premier status, and attractiveness of our Club for us and for new members in the years ahead. We are working through those details now and plan to address the subject completely in a Member Update shortly after we have closed the purchase transaction.

Our hope and aspiration is that by the time you hear from us again, we will be writing to the equity owners of the Club at Mediterra. It has been a long and arduous journey, with moments of high hopes and moments of dashed hopes. But we have endured, rallied together to preserve our dream, and now it is at hand.

Thank you.

The Advisory Board for the Members of the Club at Mediterra

Jon Conahan
Barbara Jay
Dick Ludwig
Lance Primis
Rich Schmidt
Bruce Soderholm
Jay Taylor
Irwin Teich

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