

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3  
4 IN RE: CASE NO. 08-20746-BKC-JKO

5 BEACON HILL at MOUNTAIN'S  
6 EDGE, LLC,

7 Debtor.  
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10 EMERGENCY MOTION TO JOINTLY ADMINISTER CASE(S)  
11 08-20746 INTO LEAD CASE 08-10928 FILED BY THE DEBTOR  
12 (5); EMERGENCY MOTION FOR ORDER DIRECTING, PURSUANT  
13 TO SECTION 105(a) OF THE BANKRUPTCY CODE THAT CERTAIN  
14 ORDERS ON THE CHAPTER 11 CASES OF TOUSA, INC., ET AL  
15 BE MADE APPLICABLE TO BEACON HILL AT MOUNTAIN'S EDGE,  
16 LLC FILED BY THE DEBTOR (6)

17  
18 July 31, 2008

19 The above-entitled cause came on for  
20 hearing before the HONORABLE JOHN K. OLSON,  
21 one of the Judges of the UNITED STATES BANKRUPTCY  
22 COURT, in and for the SOUTHERN DISTRICT OF FLORIDA,  
23 at 299 East Broward Blvd., Fort Lauderdale, Broward  
24 County, Florida, on Thursday, July 31, 2008,  
25 commencing at or about 9:30 a.m., and the following  
proceedings were had:

Reported By: Margaret Franzen

OUELLETTE & MAULDIN COURT REPORTERS (305) 358-8875



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APPEARANCES:

BERGER SINGERMAN, by  
PAUL S. SINGERMAN, ESQUIRE (Via Telephone)  
and  
KIRKLAND & ELLIS, by  
JOSHUA SUSSBERG, ESQUIRE (Via Telephone)  
on behalf of the Debtor

AKIN GUMP STRAUSS HAUER & FELD, by  
BRIAN GELDERT, ESQUIRE (Via Telephone)  
on behalf of the Committee of Unsecured Creditors

CHADBOURNE & PARKE, by  
SEVEN RIVERA, ESQUIRE (Via Telephone)  
on behalf of Citibank North America, Inc.

BRACEWELL & GIULIANI, by  
ILIA M. O'HEARN, ATTORNEY-AT-LAW (Via Telephone)  
on behalf of the Second Lien Holders  
and Wells Fargo, as successor administrative agent

ALSO PRESENT:

JEDD BELLMAN, Judge Olson's Law Clerk

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1 (Thereupon, the Court called into the  
2 conference call, after which the following  
3 proceedings were had.)

4 THE COURT: Good morning. This is  
5 Judge Olson in the TOUSA matter. Do we have  
6 anyone on the line?

7 MR. SUSSBERG: Good morning, your  
8 Honor. Joshua Sussberg from Kirkland & Ellis.

9 THE COURT: Good morning, Mr. Sussberg.

10 MR. SINGERMAN: Good morning, your  
11 Honor. This is Paul Singerman from  
12 Berger Singerman. We're co-counsel to Kirkland &  
13 Ellis in this matter, as well.

14 THE COURT: Good morning,  
15 Mr. Singerman.

16 Mr. Schneiderman, are you on?

17 MR. SUSSBERG: Your Honor ---

18 MR. SINGERMAN: Your Honor,  
19 Mr. Schneiderman ---

20 MR. SUSSBERG: Go ahead, Paul. I  
21 apologize.

22 MR. SINGERMAN: No, I'm sorry. Your  
23 Honor, Mr. Schneiderman was on earlier with a  
24 number of other parties who were participating  
25 telephonically and offered his comments, which

1 Mr. Sussberg will report. He had another matter  
2 involving financing that he had to excuse himself  
3 to handle in Miami.

4 THE COURT: Well, that's fine. Anyone  
5 else on the line who wants to make an appearance?

6 MR. GELDERT: Your Honor, Brian  
7 Geldert, Akin Gump Strauss Hauer & Feld, on  
8 behalf of the official committee.

9 THE COURT: Mr. Geldert, good morning.

10 MS. O'HEARN: Good morning, your Honor.  
11 Elia O'Hearn for Wells Fargo, as agent under the  
12 second lien credit agreement.

13 THE COURT: Ms. O'Hearn, good morning.

14 MR. RIVERA: Good morning, your Honor.  
15 Seven Rivera from Chadborne & Parke on behalf of  
16 the first priority mortgage.

17 THE COURT: Good morning, Mr. Rivera.

18 Anyone else? Okay.

19 We are here on the emergency motion by  
20 the debtor, Beacon Hill at Mountain's Edge, LLC,  
21 directing joint administration of the newly filed  
22 Beacon Hill case, whose number is 08-20746, filed  
23 yesterday and secondly, an emergency motion for  
24 an order directing, pursuant to Section 105(a) of  
25 the Bankruptcy Code, that certain orders in the

1 Chapter 11 cases of TOUSA, Inc., et al, be made  
2 applicable to the newly filed debtor, Beacon Hill  
3 at Mountain's Edge, LLC.

4 Mr. Sussberg or Mr. Singerman, what  
5 have you to say?

6 MR. SUSSBERG: Thank you, your Honor.  
7 First and foremost, thank you for making the time  
8 on short notice to hear us this morning.

9 THE COURT: I actually had advanced  
10 warning of this one, but I'm happy to do it.

11 MR. SUSSBERG: Thank you, and we  
12 appreciate Mr. Bellman coordinating.

13 As your Honor mentioned, last night we  
14 filed a voluntary petition for Beacon Hill at  
15 Mountain's Edge, LLC. My colleague,  
16 Ashley Blalock, has been largely responsible for  
17 shepherding this process and I appreciate all of  
18 her efforts.

19 As your Honor may recall, earlier in  
20 June you entered an order approving a settlement  
21 with respect to the Beacon Hill joint venture.  
22 Pursuant to that settlement agreement, TOUSA  
23 Homes, Inc. was authorized to acquire the  
24 remaining 51 percent membership interest in  
25 Beacon Hill.

1 THE COURT: I thought it was a 50  
2 percent interest.

3 MR. SUSSBERG: Excuse me, your Honor?

4 THE COURT: I thought it was a 50  
5 percent interest, not a 51.

6 MR. SUSSBERG: It was 51 percent, TOUSA  
7 Homes had held 49 percent.

8 THE COURT: I see, okay.

9 MR. SUSSBERG: And Beacon Hill, as you  
10 may recall, is a 187 single family town home  
11 development, part of the Mountain's Edge  
12 community, which TOUSA is also developing in and  
13 around.

14 I'm happy to report that yesterday the  
15 transaction closed, and as part of the settlement  
16 agreement, 2.2 million that was previously held  
17 in an escrow account was distributed to TOUSA  
18 Homes and we acquired the remaining 51 percent  
19 membership interest, and as a result, Beacon Hill  
20 became a wholly owned subsidiary of TOUSA Homes  
21 and the Chapter 11 filing became necessary.

22 As part of that filing, your Honor  
23 noted we filed two motions. One was for the  
24 joint administration of Beacon Hill's Chapter 11  
25 case with the other 38 affiliated TOUSA debtors.

1 We believe the entry of a joint administration  
2 order is common, generally uncontroversial and we  
3 do not believe the rights of any creditors will  
4 be adversely affected by the proposed joint  
5 administration of the cases.

6 I will note that Mr. Schneiderman  
7 commented that we should look to the joint  
8 administration form order for the Southern  
9 District of Florida to be sure that we are in  
10 conformance, and following the hearing we will do  
11 that and repost an order to the extent there are  
12 changes to be made.

13 THE COURT: Okay. Does anyone wish to  
14 be heard in connection with the joint  
15 administration motion?

16 Then I will happily grant it.

17 MR. SUSSBERG: Thank you, your Honor.  
18 We appreciate that.

19 The second motion, as your Honor noted,  
20 is at Docket Number 6 of Beacon Hill and it's  
21 directing that certain orders in the TOUSA  
22 Chapter 11 cases be made applicable to  
23 Beacon Hill.

24 Your Honor, this is in an effort to  
25 facilitate a smooth transition into Chapter 11

1 for Beacon Hill and essentially ensure that  
2 operations at Beacon Hill continue uninterrupted.

3 As a result, we would request that all  
4 of the first day relief that was previously  
5 sought in connection with the TOUSA debtors'  
6 Chapter 11 cases, and entered back on  
7 January 29th and 30th of this year, be made  
8 applicable to Beacon Hill as of today's date.

9 For example, we are seeking application  
10 of the home sales order; the lien claims order;  
11 the cash collateral order that was entered later  
12 on this year on June 20, 2008; as well as all the  
13 employment and retention applications and other  
14 administrative orders that will allow us to  
15 conveniently administer Beacon Hill's Chapter 11  
16 case, along with the other TOUSA debtors.

17 THE COURT: Well, the one question I  
18 have about that list relates to the cash  
19 collateral order. This debtor, the newly filed  
20 debtor, was not, I gather, an obligor under the  
21 first and second lien agreements, or perhaps I'm  
22 mistaken in that. I shouldn't have thought that  
23 a joint venture would be a co-obligor on that  
24 debt, but tell me what the reality is.

25 MR. SUSSBERG: No, your Honor, you are

1 correct, it was not an obligor under those  
2 agreements, although TOUSA Homes, Inc., which was  
3 the member in the joint venture, was, in fact, an  
4 obligor under those agreements and as you may  
5 recall, our D.I.P. facility had provided that  
6 TOUSA Homes had the ability to contribute cash to  
7 its joint ventures and we had, in fact, been  
8 contributing a certain amount of cash to fund the  
9 Beacon Hill operations.

10 Now Beacon Hill has become a part of  
11 TOUSA Homes, so as a result, we seek to have the  
12 ability to continue to fund certain costs that  
13 are ongoing in order to preserve and maintain the  
14 property. This very issue has, in fact, been  
15 discussed with both the first lien agent and the  
16 creditors' committee, and I believe that  
17 everybody is on board with application of the  
18 cash collateral order to Beacon Hill.

19 THE COURT: Okay. Presumably not with  
20 an acknowledgement that the assets of Beacon Hill  
21 are subject to the liens held by the first or  
22 second lien lenders.

23 MR. SUSSBERG: That is correct, your  
24 Honor. I think everyone has agreed that that  
25 would be subject to a dispute at a later day, if,

1 in fact, it was ever subject to a dispute.

2 THE COURT: Okay.

3 MR. GELDERT: Your Honor, Brian Geldert  
4 on behalf of the committee. That's an accurate  
5 statement.

6 THE COURT: Okay.

7 MR. RIVERA: Seven Rivera, your Honor,  
8 and I also agree.

9 THE COURT: Okay. Very good. Then  
10 does anyone have anything that they wish to say  
11 in respect of the TOUSA orders becoming made  
12 applicable to Beacon Hill at Mountain's Edge,  
13 LLC?

14 MR. SUSSBERG: Your Honor, I would like  
15 to add one comment that we received from  
16 Mr. Schneiderman earlier today, which we intend  
17 to incorporate. Mr. Schneiderman was concerned  
18 that to the extent any previously entered order  
19 had a deadline by which a party needed to submit  
20 documentation or a claim separate and apart from  
21 the bar date, that those deadlines not be waived  
22 and essentially passed as a result of the orders  
23 applying as of today. We agreed with  
24 Mr. Schneiderman that we would include in the  
25 order a statement that said, any date that

1 previously passed will run from the date hereof  
2 in the same amount of time that had previously  
3 been extended to creditors and parties in  
4 interest.

5 THE COURT: Okay. I hope somebody will  
6 keep a cheat sheet so we know what those are in  
7 case some objection is filed. I guess the hope  
8 would be that none will be filed and that,  
9 therefore, we won't have to go through the  
10 exercise of counting, but if that's satisfactory  
11 to Mr. Schneiderman, it's certainly satisfactory  
12 to me.

13 MR. SUSSBERG: Right. Yeah, we intend  
14 to go through and make sure that we have a  
15 collection of all the applicable deadlines.

16 One point I would note, is that there  
17 are only six creditors of this entity at this  
18 point, so it should be pretty easy to manage.

19 THE COURT: Okay. Very good. Anything  
20 else anybody wants to say about this motion?  
21 Then I will happily grant it, as well, and look  
22 to you, Mr. Sussberg, for an order in due course.

23 MR. SUSSBERG: Your Honor, we very much  
24 appreciate it.

25 THE COURT: Well, I'm happy to make

1 life easier for people if I can. Thank you very  
2 much. Anything else we need to do in the TOUSA  
3 cases, generally?

4 MR. SUSSBERG: Oh, there's definitely  
5 lots we need to do, but I think that ---

6 THE COURT: Well, we'll take it a day  
7 at a time. I'll see you all on August 14th.

8 MR. SINGERMAN: Thank you very much,  
9 your Honor.

10 THE COURT: Thanks very much. We're  
11 adjourned.

12 (Thereupon, the hearing was concluded.)

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CERTIFICATION

STATE OF FLORIDA:  
COUNTY OF DADE:

I, Margaret Franzen, Shorthand Reporter  
and Notary Public in and for the State of Florida  
at Large, do hereby certify that the foregoing  
proceedings were taken before me at the date and  
place as stated in the caption hereto on Page 1;  
that the foregoing computer-aided transcription is  
a true record of my stenographic notes taken at said  
proceedings.

WITNESS my hand this 8th day of  
August, 2008.

\_\_\_\_\_  
Margaret Franzen  
Court Reporter and Notary Public  
in and for the State of Florida at Large  
My Commission Expires: April 14, 2010

