

Motion for Entry of an Order Allowing Late Filed Proofs of Claim (the “Motion”).

By the Motion, Marcos Araujo, Joan Legendre, Richard and Judith Martin, Diego Pelaez, Eugenio Rojas and Liliana Marulanda, Richard and Carol Benoit, John and Karen Terrazas, and Alexandra Hernandez, individually and not as a class (the “Chinese Drywall Claimants”), seek entry of an order allowing each of them to file a proof of claim (each a “Chinese Drywall Claim”) after the expiration of the deadline for filing proofs of claim in the Debtors’ chapter 11 cases (the “Bar Date”).

On March 17, 2008, the Court entered an order establishing May 19, 2008 as the Bar Date (the “Original Bar Date Order”). The Motion states that each of the Chinese Drywall Claimants purchased homes that were constructed and/or sold by the Debtors and, at various times after the Bar Date, each of the Chinese Drywall Claimants became aware of personal injury and/or property damage claims related to the use of a defective product popularly referred to as “Chinese Drywall”¹ in such homes. The Chinese Drywall Claimants allege that they were precluded from filing timely proofs of claim against the Debtors because, prior to the Bar Date, they had no notice or knowledge that their homes contained Chinese Drywall. According to the Motion, on March 17, 2009, nearly a year after the Bar Date, the Debtors acknowledged in a press release that they may have liability relating to Chinese Drywall.

In support of the Motion, the Chinese Drywall Claimants allege that they did not have “all of the required information” on or before the Bar Date and, therefore, should not be penalized for their failure to file proofs of claim timely. The Chinese Drywall Claimants argue that under Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Court may, upon cause shown, extend the time within which proofs of claim may be filed. Further, the Chinese Drywall Claimants argue that (i) Bankruptcy Rule 9006(b)(1) provides that a proof of claim may be deemed timely filed by the Court “where the failure to act was the result of excusable neglect” and (ii) excusable neglect has been defined by the Supreme Court as encompassing omissions caused by “inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” *Pioneer Inv. Servs. Corp. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 (1993).

The Chinese Drywall Claimants assert that their claims satisfy the Excusable Neglect Standard (as defined below) for the following reasons:

1. There is no danger of prejudice to the Debtors because the Debtors were aware of the potential claims relating to Chinese Drywall in the Chinese Drywall Claimants’ homes, as evidenced by the press release acknowledging potential liability and the Debtors’ disclosure statement, which provides that one of the Debtors has been named as a defendant in two class action lawsuits related to Chinese Drywall. Moreover, the Debtors’ plan has not been confirmed and allowing the Chinese Drywall Claimants to file the Chinese Drywall Claims after the Bar Date would not

¹ Chinese Drywall has been blamed for sulphur-like odors, chemical emissions, corrosion of metal fixtures and wires within the walls, respiratory complications, itching throat and burning eyes. According to the Motion, the Florida Department of Health has announced that it “continues to identify and assess potential human health hazards” associated with the presence of Chinese Drywall.

force the return of amounts paid under a plan or affect distribution to creditors.

2. Although it has been more than a year and a half since the Bar Date, the delay in filing was not caused by the Chinese Drywall Claimants and the effect of the delay on bankruptcy proceedings will be minimal because the Debtors' plan has not been confirmed and the Chinese Drywall Claims are substantive claims that must be dealt with prior to confirmation. While allowance of the late-filed Chinese Drywall Claims may cause a minimal delay, it is ultimately in the best interest of the Debtors' estates.
3. The delay is justified and beyond the control of the Chinese Drywall Claimants because the Chinese Drywall Claimants had inadequate notice of the Debtors' use of defective Chinese Drywall prior to the Bar Date and the Debtors did not acknowledge their use of Chinese Drywall prior to the Bar Date.
4. The Chinese Drywall Claimants have acted in good faith and in an expeditious manner to make the Debtors aware of their intent to proceed.

A hearing on the Motion has been scheduled for March 18, 2010, with an objection deadline of March 12, 2010.