

Motion of Ana Maria Plaza for Entry of an Order Allowing Late Filed Class Proof of Claim (the “Motion”).

By the Motion, Ana Maria Plaza (“Plaza”), individually and on behalf of all other similarly situated creditors (collectively, the “Class Members”), seeks entry of an order allowing her to file a class proof of claim (the “Class Claim”) after the expiration of the deadline for filing proof of claims 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. On or about May 12, 2009, Plaza filed a class action lawsuit (the “Action”) related to a defective product popularly referred to as “Chinese Drywall.”¹ Plaza states that, but for the Debtors’ bankruptcy filings, the Debtors would have been named as defendants in the Action. Plaza further alleges that the Class Members were precluded from filing timely proof of claims against 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, Plaza alleges that the Class Members did not have “all of the required information” on or before the Bar Date and, therefore, should not be penalized for their failure to timely file proofs of claim. Plaza argues that under Rule 3003(c)(1) 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, Plaza argues 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 circumstance beyond the party’s control.” *Pioneer Inv. Servs. Corp. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 (1993).

Plaza asserts that her claim satisfies the excusable neglect standard 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 Class Members’ homes, as evidenced by the press release acknowledging potential liability. Moreover, no plan has been confirmed and allowing Plaza to file a Class Claim would not force the return of amounts paid under the plan or affect distribution to the creditors.
2. Although it has been a year since the Bar Date, the delay in filing was not caused by the Class Members and the effect of the delay on bankruptcy proceedings will be minimal because the Debtors’ plan has not been

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 is in the process of “identifying and assessing potential human health hazards” associated with the presence of Chinese Drywall.

confirmed and the Class Claim is a substantive claim that should be dealt with prior to confirmation. While allowance of the late filed Class Claim 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 Class Members because the Class Members had inadequate notice of the Debtors' use of defective Chinese Drywall prior to the Bar Date and Debtors did not acknowledge their use of Chinese Drywall prior to the Bar Date.
4. Plaza has acted in good faith and has acted in an expeditious manner.

A hearing on the Motion has been scheduled for June 23, 2009, with an objection deadline of June 18, 2009.