

Debtors' Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure Authorizing TOUSA Homes, Inc. to Enter Into the Settlement Agreement Relating to the Reflection Lakes, Reflection Isles and Simonton Communities (the "Motion").

By the Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. ("TOUSA Homes") to enter into a settlement agreement (the "Settlement Agreement") with certain Parties¹ to resolve all ongoing disputes between the Parties relating to certain Florida assets sold by the Debtors to Starwood Land Ventures, L.L.C. ("Starwood").

A. The Florida Residential Communities

1. The Reflection Lakes Community

Reflection Lakes is a residential community located in Naples, Florida consisting of certain lots (the "Reflection Lakes Lots"). The Debtors partially developed Reflection Lakes pursuant to the declaration governing the Reflection Lakes community (the "Reflection Lakes Declaration"). On September 7, 2005, the Debtors entered into (a) a construction agreement with Acacia Credit Fund 10-A L.L.C. ("Acacia 10") to develop Reflection Lakes and (b) an option agreement (the "Reflection Lakes Option Agreement"), pursuant to which the Debtors had the option to purchase the Reflection Lakes Lots according to a set acquisition schedule.

Prepetition, the Debtors exercised their option to purchase certain of the Reflection Lakes Lots ("Reflection Lakes Lots 55 and 57") from ACF Reflection Lakes.² However, because the Debtors and ACF Reflection Lakes anticipated further platting of the Reflection Lakes Lots, the transfer of the applicable deeds was delayed until such platting was completed. The Motion states that the relevant deeds have not been conveyed to the Debtors.

In addition, as a condition to developing Reflection Lakes, the Debtors were required to set aside certain property located in Hendry County, Florida (the "Hendry Property") for environmental impact mitigation. Upon completion of certain environmental measures, the Debtors must convey the Hendry Property to the Reflection Lakes HOA. The Motion states that the Hendry Property has not been conveyed to the Reflection Lakes HOA.

2. The Reflection Isles Community

Reflection Isles is a residential community located in Fort Myers, Florida consisting of certain lots (the "Reflection Isles Lots"). The Debtors partially developed Reflection Isles pursuant to the declaration governing the Reflection Isles community (the "Reflection Isles Declaration," and together with the Reflection Lakes Declaration, the "Declarations"). On July 21, 2004, the Debtors entered into (a) a construction agreement with Acacia Credit Fund 9-A L.L.C. ("Acacia 9") to develop Reflection Isles and (b) an option agreement (the "Reflection Isles Option").

¹ The Parties are TOUSA Homes, ACF 10-A Reflection Lakes III L.L.C. ("ACF Reflection Lakes"), Reflection Lakes at Naples Master Association, Inc. ("Reflection Lakes HOA"), Reflection Isles Homeowners Association, Inc. ("Reflection Isles HOA") and ACF 10-A Simonton L.L.C. ("ACF Simonton").

² Acacia 10 is the sole member of ACF Reflection Lakes.

Agreement,” and together with the Reflection Lakes Option Agreement, the “Option Agreements”), pursuant to which the Debtors exercised their option to purchase certain of the Reflection Isles Lots.

3. The Simonton Community

Simonton is a residential community located in Coconut Creek, Florida consisting of certain lots (the “Simonton Lots”). The Debtors partially developed Simonton pursuant to the declaration governing the Simonton community. On August 23, 2006, the Debtors entered into (a) a construction agreement with Acacia 10 to develop Simonton and (b) an option agreement, pursuant to which the Debtors exercised their option to purchase certain of the Simonton Lots. The Simonton Lots purchased by the Debtors are currently inaccessible absent the grant of an access easement over the roadways within Simonton, which are currently owned by ACF Simonton.³ The Motion states that ACF Simonton has not granted such an easement to the Debtors.

B. Liens Asserted by the Homeowners’ Associations

Subsequent to exercising their options to purchase certain of the Reflection Lakes Lots and the Reflection Isles Lots, the Debtors terminated the Option Agreements. Pursuant to the Declarations, upon termination of the Option Agreements, (a) Acacia 10 and Acacia 9 replaced the Debtors as the developers of Reflection Lakes and Reflection Isles, respectively, and (b) the Debtors became obligated to pay certain assessments (collectively, the “Assessments”) to the Reflection Lakes HOA and the Reflection Isles HOA, respectively.

Prepetition, the Debtors failed to pay certain of Assessments. Accordingly, the Associations recorded liens (the “Liens”) against certain of the lots purchased by the Debtors pursuant to the Option Agreements. TOUSA Homes listed three claims related to Assessments owed to the Reflection Lakes HOA on its schedule of assets and liabilities (the “Schedules”).⁴ Subsequently, the Associations each filed notices of liens due to the non-payment of the Assessments.⁵

C. The Preferential Transfers

On January 20, 2010, the Debtors initiated an adversary proceeding against the Reflection Lakes HOA seeking to avoid \$53,289.26 in prepetition payments made to the Reflection Lakes HOA on account of Assessments as preferential transfers (the “Preference Claims”). In addition, the Debtors have made a demand on the Reflection Isles HOA seeking the return of \$74,647.89 in

³ Acacia 10 is the sole member of ACF Simonton.

⁴ TOUSA Homes filed the Schedules on February 13, 2008 (D.E. # 198). Two of the scheduled claims are listed as contingent and unliquidated and one is scheduled in the amount of \$2,287.84.

⁵ On July 8, 2009, the Reflection Isles HOA filed its *Notice of Perfection of Liens for Post-petition HOA Assessments* (D.E. # 2958) (the “Reflection Isles Administrative Claims”). On November 11, 2009, the Reflection Lakes HOA filed the *Notice of Perfection of Liens for Post-petition HOA Assessments* (D.E. # 3317) (the “Reflection Lakes Administrative Claims,” and together with the Reflection Isles Administrative Claims, the “Administrative Claims”).

prepetition payments made to the Reflection Isles HOA on account of Assessments (the “Preference Demand”). The Motion states that neither of these disputes has been resolved.

D. The Starwood Sale

On January 29, 2010, the Court entered an order (D.E. # 5030) approving the purchase agreement between the Debtors and Starwood, whereby Starwood purchased certain of the Debtors’ Florida assets for approximately \$81 million (the “Starwood Sale”). The Florida assets purchased by Starwood included certain of the Reflection Lakes Lots, the Reflection Isles Lots and the Simonton Lots, including those lots on which the Associations have asserted Liens.⁶ Although the Starwood Sale included Reflection Lakes Lots 55 and 57, because ACF Reflection Lakes has yet to convey the applicable deeds to the Debtors, the sale to Starwood of such lots has been unable to close.

E. The Settlement Agreement

Following extensive negotiations, the Parties have agreed to enter into the Settlement Agreement, which resolves all ongoing disputes between the Parties. The salient terms of the Settlement Agreement are as follows:

- **The Reflection Lakes Community.**
 - ACF Reflection Lakes will execute a deed conveying Reflection Lakes Lots 55 and 57 to Starwood, subject to certain utility easements.
 - TOUSA Homes will pay to the Reflection Lakes HOA (a) \$1,042,287.94 related to past-due Assessments and (b) \$17,500 on account of anticipated expenses to be borne by the Reflection Lakes HOA relating to environmental issues.
 - In connection with the transfer of such lots, (a) the Debtors will be responsible for certain transfer taxes, title insurance premiums and recording costs and (b) Starwood will be responsible for certain transfer taxes and recording costs.
 - For purposes of determining applicable taxes, the Parties agree that the value of Reflection Lakes Lots 55 and 57 is \$62,817.49.
- **The Hendry Property.**
 - TOUSA Homes will (a) convey the Hendry Property to the Reflection Lakes HOA free and clear of liens and encumbrances that have arisen by action or inaction of TOUSA Homes (other than the Permitted

⁶ At the hearing to consider the Starwood Sale, the Debtors agreed that the Liens would attach to the proceeds of the Starwood Sale pending further agreement among the Parties.

Encumbrances agreed to by the Parties and defined in the Settlement Agreement) and (b) deliver to the Reflection Lakes HOA an owners' title insurance policy with respect to the Hendry Property.

- In connection with such transfer, (a) the Debtors will be responsible for certain transfer taxes, title insurance premiums and recording costs and (b) the Reflection Lakes HOA will be responsible for certain transfer taxes and recording costs.
- For purposes of determining applicable taxes and the appropriate amount of title insurance, the Parties agree that the value of the Hendry Property is \$50,000.00.
- **The Reflection Isles Community.** TOUSA Homes will pay to the Reflection Isles HOA (a) \$597,184.14 related to past-due Assessments and (b) \$23,000 on account of anticipated expenses to be borne by the Reflection Isles HOA relating to environmental issues.
- **The Simonton Community.** ACF Simonton will grant an easement to Starwood over the roadways within the Simonton community. TOUSA Homes will pay recording costs in connection with such easement.
- **Releases.** At closing, (a) the Associations will release the Liens and release TOUSA Homes from any obligations pertaining to Assessments incurred through February 17, 2010 and (b) TOUSA Homes will release the Associations from the Preference Claims and the Preference Demand, as applicable. TOUSA Homes will file a notice of voluntary dismissal, with prejudice, of the Reflection Lakes adversary proceeding.
- **Administrative Claims.** The Associations will withdraw their applications for allowance of the Administrative Claims with prejudice.

The Debtors assert that the Settlement Agreement is in the best interests of their estates and creditors because it provides for an efficient resolution of all ongoing disputes among the Parties and it will provide much-needed finality with respect to the Starwood Sale. In addition, the Debtors assert that the releases to be provided by the Associations and the withdrawal of the Administrative Claims will eliminate any further exposure that the Debtors may have under the Declarations.

A hearing on the Motion is scheduled for June 16, 2010, with an objection deadline of June 11, 2010.