

**Debtors' Motion for an Order Approving Stipulation Between Certain Debtors and G.E. Consumer & Industrial Division to Set Off and Settle Certain Prepetition Obligations (the "GE Motion").**

By the GE Motion, the Debtors seek entry of an order (a) authorizing the Debtors to enter into a stipulation (the "Stipulation") with G.E. Consumer & Industrial Division ("GE") to set off and settle certain pre-petition obligations and (b) modifying the automatic stay in the chapter 11 cases solely for the purpose of allowing the parties to implement the setoff contemplated in the Stipulation.

The Debtors purchase home appliances from GE as their exclusive supplier pursuant to a master pricing agreement (the "Master Agreement"). Under the Master Agreement, the Debtors earn rebates from GE on their purchases on a percentage basis. The Master Agreement, entered into in June 2003, is not a long-term supply contract, but rather sets the general terms and conditions for transactions between the Parties, which they enter into at their mutual discretion pursuant to short-term or one-time purchase orders.

GE pays the Debtors rebates semi-annually based on the volume of the appliances purchased by the Debtors. According to the Debtors' records and discussions with GE, the Debtors have determined that GE owed the Debtors approximately \$911,210.56 (the "TOUSA Receivable") in the aggregate as of the petition date on account of rebates under the Master Agreement.

The TOUSA Receivable is owed by GE to three of the Debtors in the amounts as follows: (i) Newmark Home Purchasing, L.P.: \$399,861.60; (ii) TOUSA Homes, Inc.: \$343,628.54; and (iii) Engle Homes Residential Construction L.L.C.: \$167,720.42.

On May 12, 2008, GE filed seven proofs of claims (the "POCs") against the Debtors, alleging that, in the aggregate, the Debtors owed GE a total of \$736,861.40 on account of goods and services provided to the Debtors before the commencement of the Debtors' chapter 11 cases. In each of the POCs, GE asserted that its claim was secured by a right of setoff against the Debtors on account of amounts owed by the Debtors to GE. GE's POCs assert the following claims:

- 1) Claim #2199 for \$4,028.00 against Engle Sierra Verde P4, LLC;
- 2) Claim #3179 for \$4,028.00 against Engle Sierra Verde P5, LLC;
- 3) Claim #3186 for \$313,478.03 against Newmark Homes Purchasing, LP;
- 4) Claim #3183 for \$252.61 against Newmark Homes, LP;
- 5) Claim #3189 for \$27,728.76 against Reflection Key, LLC;
- 6) Claim #3191 for \$71,989.82 against TOUSA Homes, Inc.; and
- 7) Claim #2212 for \$315,356.18 against TOUSA, Inc.

The Debtors allege that they have engaged in arms' length negotiations with GE to reconcile the amount of the TOUSA Receivable and the amount of the Debtors' obligations to GE. As a result, the Debtors and GE are prepared to enter into the Stipulation which provides as follows:

- a. The Debtors' total liability to GE with respect to the amounts asserted in the POCs is approximately \$708,316.01 (the "GE Debt") to be allocated among the Debtors as set forth below:
  - (i) Newmark Homes Purchasing, L.P.: \$321,769.88;
  - (ii) TOUSA Homes, Inc.: \$276,114.70;
  - (iii) Engle Homes Residential Construction L.L.C.: \$82,987.22; and
  - (iv) TOUSA Homes Florida, L.P.: \$27,444.22.
- b. Except with respect to TOUSA Homes Florida, L.P., the GE Debt owed by each of the above-named Debtors may be set off against the TOUSA Receivable owed to each Debtor pursuant to Bankruptcy Code section 553.
- c. The automatic stay under Bankruptcy Code section 362 will be lifted to allow the agreed setoff, resulting in a remaining balance owed by GE to each of the Debtors in the amounts set forth below:
  - (i) Newmark Homes Purchasing L.P.: \$78,091.71;
  - (ii) TOUSA Homes, Inc.: \$67,513.84; and
  - (iii) Engle Homes Residential Construction L.L.C.: \$84,733.20.
- d. GE shall pay the remaining TOUSA Receivable to the applicable Debtors within ten business days of the Court's entry of an order approving the Stipulation.
- e. Pursuant to the Critical Vendors Order, TOUSA Homes Florida, L.P. shall pay to GE within ten business days of the Court's entry of an order approving the Stipulation \$27,444.22 in satisfaction of its share of the GE Debt.
- f. GE agrees to continue to supply goods and services to the Debtors pursuant to normal and customary trade terms, as provided in the Master Agreement.

The Debtors argue that entry into the Stipulation is in the best interests of the estates of each of the affected Debtors. In this regard, Debtors note that the Stipulation will resolve more than \$736,000 in asserted secured claims, many of which the Debtors would have been required to object to in order to reclassify the claims against the correct Debtor.

The Debtors also contend that the Stipulation will result in a net cash inflow to the Debtors' estates of approximately \$203,000 after taking into account the approximate \$27,000 payment to be made to GE by TOUSA Homes Florida, L.P. The Debtors believe that this payment to GE is

warranted because GE is their exclusive supplier of home appliances, does not have a long-term supply contract with the Debtors, and has agreed to enter into a vendor agreement consistent with the Critical Vendors Order.

The Debtors further believe that the automatic stay should be lifted solely to permit the setoff of mutual obligations as contemplated by the stipulation because the setoff will resolve over \$736,000 in secured claims asserted against the Debtors and result in a substantial net inflow of cash to the Debtors' estates.

***A hearing on the TOUSA Motion is scheduled for August 14, 2008, with a corresponding objection deadline of August 10, 2008.***