

**Debtors' Motion to (A) Reject Purchase and Sales Agreement By and Between TOUSA Homes, Inc. and SS Reflection Isles-Lakes, Ltd. and (B) Remove Related Notice of *Lis Pendens* (the "Reflection Isles Motion").**

By the Reflection Isles Motion, the Debtors seek entry of an order (i) authorizing them to reject a sale agreement (the "Contract") between Debtor TOUSA Homes, Inc. ("TOUSA Homes") and SS Reflection Isle-Lakes, Ltd. ("Reflection Isles") for the sale of twenty-eight completed homes in two communities located in Lee County, Florida (the "Property") to Reflection Isles, and (ii) removing the notice of *lis pendens* related to the Property. While the Debtors believe that the Bankruptcy Court may ultimately be required to determine damages related to the rejection of the Contract, they seek an order immediately to clarify the status of the Property and any obligations related thereto.

On December 20, 2007, TOUSA Homes entered into the Contract with Michael Seltzer and Gerald Shapiro for the purchase and sale of the Property. Under the Contract, Shapiro and Seltzer were to form Reflection Isles, which would become the successor to their interests under the Contract. Subsequently, TOUSA Homes agreed to amend the Contract to include the sale of thirty-six homes for a reduced bulk purchase price of approximately \$3.1 million. By the Contract, as amended, both Reflection Isles and TOUSA Homes agreed to refrain from interfering with each entity's respective marketing efforts. The Debtors allege, however, that in January 2008, before the closing under the Contract, the Debtors learned that Reflection Isles intended to market the Property at significantly reduced prices, and had communicated such information to residents in the community where the Property is located. The Debtors learned about these actions and determined that by these actions, Reflection Isles anticipatorily breached the Contract, resulting in termination of the Contract before the sale closed.

On January 18, 2008, Reflection Isles brought suit against TOUSA Homes in the Circuit Court for Lee County, Florida, seeking specific performance under the Contract. In addition, Reflection Isles filed a *lis pendens* with respect to the property to put other potential purchasers on notice of Reflection Isles' asserted interest in the property. Reflection Isles' lawsuit was stayed by the automatic stay on the day the Debtors filed for chapter 11 protection.

The Debtors argue that if the Contract was not properly terminated before the Petition Date, which the Debtors believe it was, the Contract is executory, and may therefore be rejected under section 365 of the Bankruptcy Code. The Debtors argue that if the Contract is still in effect, the Contract is executory because TOUSA Homes has yet to deliver the Property, and Reflection Isles has yet to pay the Contract price. Further, the Debtors argue that the ongoing covenants, such as the marketing covenant that TOUSA Homes believes Reflections Isles has breached, would require performance by both parties. Because of these unperformed obligations by both parties, the Debtors believe that the Contract is executory and, therefore, subject to rejection.

The standard for rejection of a contract under the Bankruptcy Code is the business judgment standard, which requires only that the Debtors use reasonable business judgment in deciding which contracts to reject. The Debtors assert that rejection of the Contract is in the best interest of their estates because if Reflection Isles is allowed to purchase the Property, Reflection Isles will sell the Property at reduced prices that will decrease the value of the Debtors' other properties located in the same developments. Further, if Reflection Isles sells the Property at

depressed prices, the Debtors believe that they may face legal challenges from current homeowners in the developments whose property value will suffer. Lastly, the Debtors assert that it would be costly and inefficient to perform under the Contract, and then by legal action, attempt to enforce the marketing provisions which the Debtors assert have already been breached. If the Contract is rejected, the Debtors believe they will be able to market the Property, and find other buyers with less risk and issues as compared with Reflection Isles.

The Debtors further allege that should the Court approve the motion to reject the Contract, the Court should order the *lis pendens* removed from the property because Reflection Isles' remedy for rejection of the Contract is damages, not possession of the property. According to the Debtors, Reflection Isles is not in possession, and the *lis pendens* does not create a possessory interest. The Debtors propose that Reflection Isles be required to file a proof of claim within thirty days from entry of an order approving the Reflection Isles Motion.

***An order granting the Reflection Isles Motion was entered on March 6, 2008.***