

Shire's Court, Ltd.'s Motion for Relief from the Automatic Stay and Motion to Compel Newmark Homes, L.P. to Assume or Reject Executory Contract (together, the "Shire's Court Motions").

By the Shire's Court Motions, Shire's Court, Ltd. ("Shire's Court") seeks (i) relief from the automatic stay pursuant to Bankruptcy Code section 362(d) to terminate that certain Purchase and Sale Agreement dated November 22, 2005, as amended (the "Agreement"), by and between Shire's Court and Newmark Homes, L.P. ("Newmark") and (ii) to compel Newmark to assume or reject the Agreement.

According to Shire's Court, the Agreement relates to the development of Edgewick, a 290-lot single family detached condominium development ("Edgewick"), located in Austin, Texas. Shire's Court alleges that because of Newmark's failure to proceed with its obligations under the Agreement, work on the Edgewick development has stalled during these chapter 11 cases.

Shire's Court alleges that Newmark is in default under the Agreement because Newmark has failed to (i) close the minimum number of lots required by the Agreement, (ii) comply with its obligations to market the homes within Edgewick and (iii) properly maintain the homes it has built in Edgewick, which currently serve as model homes. Shire's Court further argues that Newmark has essentially abandoned Edgewick, and no sales personnel remain onsite.

Shire's Court states that it delivered notice of the defaults to Newmark by letter dated March 30, 2009, in which Shire's Court provided Newmark with ten days to cure, as required by the Agreement. However, Shire's Court alleges that Newmark has not responded. Shire's Court asserts that the Debtor's defaults are causing harm to its business because Shire's Court is unable to develop the property and sell homes during a prime season. Instead, Shire's Court has been required to pay interest on its loans while not receiving any income from lot sales. Shire's Court asserts that it is in a position to move forward with either building units itself or locating another builder to construct the units.

In addition to relief from the automatic stay, Shire's Court asks that the Court require Newmark to assume or reject the Agreement within 15 days of entry to an order granting the motion to compel. Shire's Court alleges that this shortened time frame is appropriate because Newmark has had over a year to determine whether to assume or reject the Agreement.

No hearing has been scheduled on the motion for relief from the automatic stay, but an objection deadline of May 1, 2009 has been set. A hearing on the motion to compel has been scheduled for May 14, 2009, with an objection deadline of May 8, 2009.

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