

Motion of GMAC Model Home Finance, LLC for Relief from Automatic Stay to Permit the Commencement of Eviction Proceedings and Take Other Actions to Regain Possession of Properties (the “MHF Motion”).

By the MHF Motion, GMAC Model Home Finance, LLC (“MHF”) seeks entry of an order (i) finding that MHF’s actions to repossess certain property are not subject to the automatic stay or, alternatively, (ii) lifting the automatic stay to permit MHF to repossess such property.

On September 11, 2003, MHF and Debtor TOUSA Homes Inc. (“TOUSA Homes”) entered into a Master Purchase, Construction Management, and Rental Agreement (the “Agreements”), under which MHF purchased lots from third parties and paid TOUSA Homes to develop homes on the lots (the “Model Homes”). MHF then leased the Model Homes to TOUSA Homes for use as construction offices and/or sales offices. The Agreements also allowed TOUSA Homes to purchase the Model Homes under certain circumstances.

According to MHF, pursuant to the Agreements, TOUSA Homes was required to pay rent to MHF for use of the Model Homes and to commence construction of other homes on a specified schedule. In addition, if TOUSA Homes fell below certain financial benchmarks, TOUSA Homes was required to post a letter of credit for 3% of the value of the Model Homes. If, after certain notice and cure periods, these financial benchmarks were not met, MHF had the right to rescind the Agreements.

On October 12, 2007, TOUSA Homes’ senior unsecured credit rating fell, and under the Agreements, TOUSA Homes was required to provide MHF with a letter of credit that TOUSA Homes never provided. According to MHF, TOUSA Homes never cured this breach. On October 24, 2007, MHF notified TOUSA Homes that it had failed to keep pace with the Agreements’ construction schedule. MHF alleges that, under the Agreements, such default required TOUSA Homes to purchase the Model Homes from MHF. Of the twenty-two Model Homes governed by the Agreements, TOUSA Homes purchased only one. Further, in November of 2007, TOUSA Homes did not pay rent to MHF, and did not cure the default within five days as required by the Agreements.

On December 28, 2007, MHF sent a letter to TOUSA Homes terminating the Agreements, and 130 leases of Model Homes thereunder. MHF believes that TOUSA Homes has not vacated approximately 72 of the Model Homes.

MHF argues that because the Agreements are commercial leases and were terminated before the date on which the Debtors commenced their chapter 11 cases (the “Petition Date”), TOUSA Homes no longer has any rights as a lessee under the Agreements. Specifically, MHF argues that pursuant to the Bankruptcy Code and applicable legal precedent, a lease terminated by a default prior to the Petition Date is not subject to the automatic stay and, thus, because the Agreements were terminated prior to the Petition Date, any actions taken to repossess the Model Homes, including eviction proceedings, will not be a violation of the automatic stay. Because the Debtors have indicated to MHF that they believe the automatic stay may apply, MHF seeks an order from the Court to clarify MHF’s rights with respect to the Model Homes.

MHF asks that if the Court finds that the automatic stay applies, then the Court should lift the stay to allow MHF to pursue available remedies against TOUSA Homes because TOUSA Homes has no current interest in the properties as their leases have been terminated.

A hearing on the MHF Motion has been scheduled for April 9, 2008, with an objection deadline of April 4, 2008 at 4:00 p.m. (ET).