

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO**

In re:

Case No. 6:06-bk-00456-ABB
Chapter 11

EMERALD COVE VILLAS, LLC,

Debtor.

_____ /

ORDER

This matter came before this Court on the Motion for Relief from Stay or in the Alternative, for Abstention (Doc. No. 326) ("Motion") filed by Bythebridge, LLC, the Movant herein ("Bythebridge"), seeking relief from the automatic stay pursuant to 11 U.S.C. Section 362(d) to allow litigation pending in the Florida state court involving the validity of two contracts to proceed, or, in the alternative, that this Court abstain from determining the validity of the contracts pursuant to 28 U.S.C. Sections 157 and 1334. A final evidentiary hearing was held on January 31, 2007 at which counsel for the Debtor, counsel for Bythebridge, counsel for Royall Construction of Florida I, Inc., and other interested parties appeared. The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

The Debtor is jointly owned by Bythebridge and Serenity, LLC. It was involved in a townhouse development project in Bay County, Florida known as Emerald Cove Villas. The Debtor engaged Royall Construction of Florida I, Inc. ("RCF") prepetition as the general contractor of the project and entered into a written agreement on July 19, 2005 ("Construction Agreement") setting forth the engagement terms. The Construction Agreement was executed by Hardin J. Royall, Jr., a/k/a Jay Royall ("Royall"), as President of RCF and as Manager of the Debtor.

The Debtor purportedly engaged Riverfront Equities, Inc. ("Riverfront Equities") through an oral agreement in 2003 or 2004 to market and sell the townhouses. The Debtor and Riverfront purportedly reduced their Marketing Agreement to writing by executing a Non-Exclusive Listing Agreement for the Sale of Property.¹ Royall executed the Non-Exclusive Listing Agreement as the Manager of Emerald Cove, LLC (an entity that is not the Debtor) and Joseph Royal

executed the document as President of Riverfront Equities. Riverfront Equities then purportedly engaged Riverfront Equities Realty, Inc. ("Riverfront Realty") to assist it with performance of the Marketing Agreement (collectively, the purported agreements between the Debtor, Riverfront Equities, and Riverfront Realty shall be referred to as the "Marketing Agreement").

Royall is the Manager of the Debtor, wholly owns Serenity, LLC, is the sole shareholder, officer, and director of RCF, and has controlling interests in several other entities. He executed the Debtor's petition and is the designated representative of the Debtor. Joseph Royall, a/k/a Hardin J. Royall, III, is Royall's son and he is the sole shareholder, officer, and director of Riverfront Equities. Royall and/or his son own and/or control Riverfront Realty.

Bythebridge and three co-plaintiffs instituted, prepetition, a civil action against Royall, his son, the Debtor, and several other defendants in the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida ("State Court") captioned *Emerald Beach Resorts, L.L.C., et al. v. Hardin J. Royall, Jr., et al.*, Case No. 05-002908-CA ("State Court Litigation") disputing the validity of the Construction and Marketing Agreements on the grounds the transactions involve conflicts of interests, Bythebridge did not ratify the Agreements, and they are void pursuant to Florida state law. The plaintiffs dispute the validity of other contracts executed by the parties in connection with the Emerald Cove Villas project and other development projects. Royall and certain defendants instituted a counterclaim against some of the plaintiffs.

The Debtor filed a Motion seeking authority to assume the Construction Agreement as an executory contract (Doc. No. 36) and, after the Debtor's assets were sold at auction, filed a motion seeking to reject the Construction Agreement (Doc. No. 308). The Debtor anticipates a rejection damages claim of \$1,685,835 by RCF.² The Debtor has not withdrawn its motion to assume the Construction Agreement. Bythebridge objects to the motion to reject on the basis the Construction Agreement is void pursuant to Florida state law (Doc. No. 328). The Debtor's Motion to assume the Construction Agreement is moot by virtue of the sale of its assets and its pending rejection motion.

The Debtor filed a motion seeking to reject the Marketing Agreement as to Riverfront Equities (Doc. No. 315). The Debtor anticipates "no allowable damage claims to Riverfront Equities, Inc. by virtue of the

¹ See Addenda to Claim Nos. 112 and 113.

² Doc. No. 308 at ¶ 7; Claim No. 62 filed by RCF.

rejection.”³ Bythebridge objects to the rejection motion on the basis the Marketing Agreement is void pursuant to Florida state law and cannot be rejected (Doc. No. 329).

The dispute regarding the validity of the Construction Agreement intersects with certain claims. RFC filed unsecured claims (Claim No. 56, which was amended by Claim No. 62) based upon the Construction Agreement and RFC’s alleged status as General Contractor. Bythebridge objected to the claims contending the claims must be disallowed because the underlying Construction Agreement is void (Doc. Nos. 327).⁴

The automatic stay of 11 U.S.C. Section 362(a)(1) arose on March 14, 2006 (“Petition Date”) staying the State Court Litigation as to the Debtor. Bythebridge seeks relief from the automatic stay pursuant to Section 362(d)(1) in order to proceed with the State Court Litigation to obtain a determination as to the validity of the Construction and Marketing Agreements. Section 362(d)(1) provides, on request of a party in interest and after notice and a hearing, a court shall grant relief from the stay, such as by terminating, annulling, modifying, or conditioning such stay, “for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1) (2005).

The courts have interpreted the language of Section 362(d)(1) to include a broad set of circumstances constituting “cause” for stay relief. *See, e.g., Carver v. Carver*, 954 F.2d 1573, 1578 (11th Cir. 1992), *cert. denied*, 506 U.S. 986, 113 S. Ct. 496, 121 L. Ed. 2d 434 (1992) (holding courts should liberally grant relief where debtor fails to make alimony, maintenance or support payments “to avoid entangling the federal court in family law matters”); *In re Dixie Broad., Inc.*, 871 F.2d 1023, 1026, (holding a petition filed in bad faith justifies lifting the stay); *In re Robbins*, 964 F.2d 342, 346 (4th Cir. 1992) (concluding cause exists where lifting the stay will promote judicial economy); 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a], at 362-84.19 (15th ed. rev. 2005) (detailing cause findings by various courts)). The drafters of § 362(d)(1) acknowledged in the statute’s legislative history the stay should be lifted where proceedings should continue in a non-bankruptcy forum:

³ Doc. No. 315 at ¶ 5.

⁴ The Riverfront entities filed two virtually identical claims. Riverfront Equities filed an unsecured nonpriority claim, Claim No. 112, for \$3,851,062.10. Riverfront Realty filed an unsecured nonpriority claim, Claim No. 113, for \$3,851,062.10. These claims were withdrawn on December 9, 2006 (Doc. No. 325).

It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

S. REP. NO. 989, 95th Cong., 2d Sess. at 50 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5836.

Whether cause exists to grant stay relief must be determined on a case by case basis based upon the totality of the circumstances in each particular case. *In re Aloisi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001); *In re Wilson*, 116 F.3d 87, 90 (3d Cir. 1997) The “decision to lift the stay is discretionary with the bankruptcy judge, and may be reversed only upon a showing of abuse of discretion.” *In re Dixie Broad., Inc.*, 871 F.2d at 1026. Equitable considerations, such as balancing prejudice to the debtor against hardship to the moving party, and judicial economy considerations (location of witnesses, documents, necessary parties) are relevant in determining whether to lift the stay. *In re Aloisi*, 504 B.R. at 508.

Cause exists to grant Bythebridge relief from the stay pursuant to 11 U.S.C. Section 362(d)(1) based upon the totality of the facts and circumstances of this case. The State Court Litigation regarding the validity of the Construction and Marketing Agreements centers on Florida state law, not bankruptcy law, and the State Court is best suited to determine those issues. The State Court Litigation was instituted several months before the Petition Date and progressed significantly. Allowing the State Court Litigation to proceed against the Debtor is the best and most efficient use of judicial resources. A balancing of the hardships weighs in Bythebridge’s favor. Making the numerous parties litigate their contract claims in this forum would work a hardship on Bythebridge that outweighs any prejudice the Debtor may suffer by having the litigation proceed in State Court. Allowing the State Court to adjudicate the validity of the Construction and Marketing Agreements will not prejudice the bankruptcy estate.

Section 1334(c)(1) of Title 28 further supports allowing the State Court to determine the validity of the Construction and Marketing Agreements. This statutory provision allows for discretionary abstention by a court from hearing a particular proceeding arising in or related to a bankruptcy case.⁵ Proper reasons for abstaining

⁵ Section (c)(1) provides: “Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for state law, from abstaining from

pursuant to Section 1334(c)(1) include “existing state court proceedings between the same parties having the same issue, the inconvenience of the federal forum, the avoidance of piecemeal litigation, the source of law being state rather than federal, and whether the state law can adequately protect the party seeking federal jurisdiction.” In re Six, 80 F.3d 452, 458 (11th Cir. 1996).

This Court has jurisdiction to adjudicate the validity of the Construction and Marketing Agreements pursuant to 28 U.S.C. Section 157(a)(2)(B) because the validity of those contracts relates to the allowance or disallowance claims against the estate. The interests of justice, however, will be best served by the abstention of this Court, pursuant to 28 U.S.C. Section 1334(c)(1), from hearing the contract validity claims and allowing such issues to be adjudicated by the State Court. The Debtor’s motions to reject the Construction and Marketing Agreements, Bythebridge’s objections thereto, and Bythebridge’s objections to RFC’s claims shall be held in abeyance. No further action shall be taken regarding these matters until the entry of a final, nonappealable order determining the validity of the Construction and Marketing Agreements in the State Court Litigation.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Bythebridge’s Motion is hereby **GRANTED** and the automatic stay of 11 U.S.C. Section 362(a) is lifted pursuant to 11 U.S.C. Section 362(d)(1) to allow the parties to proceed with the State Court Litigation so the State Court may adjudicate the validity of the Construction and Marketing Agreements; and it is further

ORDERED, ADJUDGED and DECREED that the Court, pursuant to 28 U.S.C. Section 1134(c)(1), hereby abstains from hearing the parties’ claims relating to the validity of the Construction and Marketing Agreements and such claims shall be adjudicated by the State Court; and it is further

ORDERED, ADJUDGED, and DECREED that the parties shall keep this Court apprised of the status of the State Court Litigation at scheduled hearings in this case and in the event the State Court Litigation is delayed or fails to progress, a party in interest may file a motion seeking relief from this Order; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor’s Motion to assume the Construction Agreement (Doc. No. 36) is **MOOT** and the Debtor’s

hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. § 1334(c)(1) (2005).

Motion to reject the Construction Agreement (Doc. No. 308) and its Motion to reject the Marketing Agreement (Doc. No. 315) are held in **ABEYANCE** pending the entry of a final, nonappealable order determining the validity of the Construction and Marketing Agreements in the State Court Litigation; and it is further

ORDERED, ADJUDGED and DECREED that Bythebridge’s Objection to Claim Nos. 56 and 62 (Doc. No. 327) is held in **ABEYANCE** pending the entry of a final, nonappealable order determining the validity of the Construction and Marketing Agreements in the State Court Litigation.

Dated this 2nd day of March, 2007.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge