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In re Tellico Landing, LLC

RICHARD E. GRAVES & LEE T. NUTINI*

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I. Introduction and Overview

This bankruptcy proceeding represents only one front in a multi-forum litigation war among several parties. The bankruptcy results in part from the recent housing crash and its chilling effect on the development of a residential community named “Rarity Pointe.” Also contributing to the proceeding were internal disputes within Tellico Landing, LLC, the entity behind Rarity Pointe. While events outside this proceeding dictated each party’s respective bankruptcy litigation goals, the Bankruptcy Code provided for the means by which each party went about pursuing those goals. This story is largely told chronologically, with occasional asides explaining how bankruptcy law affects each party’s rights, and, perhaps more importantly, how each party’s interests dictated its preferred application of bankruptcy law.

a. Bankruptcy Generally; A Note to the Lay Reader

Chapter 11 bankruptcy “is, in essence, a judicially-supervised negotiation process.”¹ Typically, Chapter 11 involves an effort to reorganize a struggling business so that it may continue in existence “and pay its creditors over time.”² The goals of Chapter 11 generally fall into two broad categories: preserving the going concern value of a distressed business and assuring equitable distribution among a distressed business’s creditors.³ The idea behind preserving the going concern value is that the value of an operating business as a whole is greater than the sum of all its parts.⁴ Through various protections, the Bankruptcy Code (the “Code”) gives distressed individuals and businesses some leverage with creditors that otherwise would

* J.D. Candidates, The University of Tennessee College of Law, May 2015. All opinions and errors are solely attributed to the authors and not the University. Authors may be reached for comment or publication purposes here.

¹ THOMAS J. SALERNO ET AL., PRE-BANKRUPTCY PLANNING FOR THE COMMERCIAL REORGANIZATION 7 (2d ed. 2008), *available at* WestlawNext Bankruptcy Texts & Treatises.

² Administrative Office of the United States Courts, *Reorganization Under the Bankruptcy Code*, <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter11.aspx> (last visited Feb. 13, 2015).

³ John D. Ayer & Jonathon Friedman, *An Overview of the Automatic Stay*, 22-Jan. AM. BANKR. INST. J. 16 (2004), *available free online through NACM Oregon at*, http://www.nacmoregon.org/files/8.4_Chapter_11_-_An_Overview_of_the_Automatic_Stay.pdf.

⁴ JAY ALIX ET AL., FINANCIAL HANDBOOK BANKR. PROF. § 6.1 (2d ed. 2014), *available at* WestlawNext Bankruptcy Texts & Treatises.

not exist.

The Code sets out eligibility requirements to file under Chapter 11.⁵ Generally, individuals, partnerships, and corporations may file for Chapter 11 protection.⁶ Most banking institutions and governmental units may not seek relief under Chapter 11.⁷ The Code refers to a person who files for bankruptcy as a “debtor.”⁸ A debtor may file a Chapter 11 petition in a district that contains the location of the debtor’s “domicile, residence, principal place of business . . . or principal assets” within the previous 180 days of filing the petition.⁹ A debtor may additionally file a Chapter 11 petition in a district where there is a current pending Chapter 11 proceeding of a debtor’s “affiliate, general partner, or partnership.”¹⁰ When the debtor is a business entity, the person filing the petition must have the authority to do so.¹¹ “In absence of federal incorporation, that authority finds its source in local law.”¹² If the person filing the petition has no authority to do so, the proceeding must be dismissed.¹³

Numerous considerations—legal, financial, and strategic—should pre-date filing a bankruptcy petition. Because the goal of Chapter 11 is to reorganize and preserve a business, would-be debtors need to have an exit strategy before filing.¹⁴ Proceeding with a Chapter 11 case without a strategy risks thwarting the goals behind reorganization.¹⁵ Often, though, businesses file Chapter 11 to acquire the Code’s protections to fend off “impending doom.”¹⁶ Frequently, debtors file petitions to delay an imminent foreclosure in residential and commercial settings without the benefit of a predetermined bankruptcy strategy.¹⁷ If the court determines the

⁵ 11 U.S.C. § 109(d).

⁶ 11 U.S.C. § 109(b), (d); 11 U.S.C. § 101(41).

⁷ 11 U.S.C. § 109(b), (d); 11 U.S.C. § 101(41).

⁸ 11 U.S.C. § 101(13).

⁹ 28 U.S.C. § 1408(1).

¹⁰ *Id.*

¹¹ *Price v. Gurney*, 324 U.S. 100, 106 (1945). ¹² *Id.*

¹³ *Id.*

¹⁴ ALIX, *supra* note 4, at § 6.1.

¹⁵ ALIX, *supra* note 4, at § 6.1.

¹⁶ ALIX, *supra* note 4, at § 6.1.

¹⁷ ALIX, *supra* note 4, at § 6.1.

case to be a “single asset real estate” case, then creditors may be able to take advantage of Code provisions limiting the ability of a debtor to delay foreclosure.¹⁸

1. A Note on Common Debtor Protections

Among the most valuable protections bankruptcy affords debtors is the “automatic stay.”¹⁹ By filing for protection under the Code, an “estate” is created, generally consisting of any “interest in property” that belongs to the debtor.²⁰ At this time, the stay is executed, preventing creditors from pursuing or enforcing claims against the debtor or the estate.²¹ Subject to exceptions, this prevents many creditor actions, including commencing or continuing legal action against the debtor, enforcing existing judgments against the debtor, and collecting prepetition claims against the debtor.²² In design and effect, this gives the debtor “breathing room” from creditors,²³ enabling the debtor to focus on forming a “reorganization plan” to satisfy creditor claims and, hopefully, preserve the business.

The debtor-in-possession or trustee also enjoys the general ability, subject to court approval, to assume or reject executory contracts and unexpired leases.²⁴

Upon filing under Chapter 11, a debtor continues to possess and operate the business as a “debtor-in-possession.”²⁵ This differs dramatically from Chapter 7 proceedings, where upon filing a trustee is appointed to collect the debtor’s assets, liquidate, and distribute the proceeds to creditors.²⁶ A trustee will be appointed to operate a debtor’s business, however, where cause

¹⁸ 11 U.S.C. § 362(d)(3).

¹⁹ John D. Ayer & Jonathon Friedman, *An Overview of the Automatic Stay*, 22-Jan. AM. BANKR. INST. J. 16 (2004), available free online through NACM Oregon at, http://www.nacmoregon.org/files/8.4_Chapter_11_-_An_Overview_of_the_Automatic_Stay.pdf.

²⁰ 11 U.S.C. § 541(a).

²¹ 11 U.S.C. § 362(a).

²² *Id.*

²³ John D. Ayer & Jonathon Friedman, *An Overview of the Automatic Stay*, 22-Jan. AM. BANKR. INST. J. 16 (2004), available free online through NACM Oregon at, http://www.nacmoregon.org/files/8.4_Chapter_11_-_An_Overview_of_the_Automatic_Stay.pdf.

²⁴ 11 U.S.C. § 365.

²⁵ *Id.* at § 1107(a).

²⁶ *Id.* at § 704(a).

such as fraud or gross mismanagement by the debtor-in-possession exists.²⁷ Absent such a determination, though, a debtor may continue to control the day-to-day operation of the debtor's business.²⁸

Where a trustee has not been appointed, a debtor-in-possession enjoys the exclusive right, for the first 120 days of the proceeding, to file a reorganization plan with the bankruptcy court.²⁹ Unless this 120 day exclusive period is extended, no other party to the proceeding may file a plan.³⁰ Accordingly, the debtor-in-possession initially enjoys power as a gatekeeper of plan development. This is a valuable right, as “[t]he development, negotiation, and ultimate confirmation of a reorganization plan is central to the Chapter 11 process.”³¹

A reorganization plan, confirmed by a bankruptcy court, can allow a debtor, with the blessing of the law, to restructure and eliminate debt.³² Furthermore, a bankruptcy judge can confirm a plan, even over the objection of a creditor, if the plan meets certain Code requirements.³³ In this sense, the plan is said to “cram down” the wishes of objecting parties.³⁴ Upon confirmation of a plan, the plan is binding on all interested parties, and the debtor is discharged of pre-confirmation debts.³⁵

Now that the reader has a foundation for understanding the basic landmarks in a typical Chapter 11 case, we turn to the case at hand. This is Tellico Landing's story.

b. Cast of Characters

- i. Tellico Landing, LLC (“Tellico Landing”)* – The debtor and namesake of the proceeding. Tellico Landing is a member-managed limited liability company with three members: Ward Whelchel, Robert Stooksbury, and LTR Properties, Inc.

²⁷ *Id.* at § 1104(a).

²⁸ *See id.*

²⁹ 11 U.S.C. § 1121(b), (c)(1).

³⁰ 11 U.S.C. § 1121(c), (d)(1).

³¹ Mitchel Appelbaum & Elisabeth G. Gasparini, “*Gifting*” to Junior Classes: *Can it be done?* 26-Feb. AM. BANKR. INST. L. REV. 16 (2007).

³² 11 U.S.C. § 1123(b).

³³ *Id.* at § 1129(b).

³⁴ *In re Sunflower Racing, Inc.*, 219 B.R. 587, 590 (Bankr. D. Kan. 1998).

³⁵ 11 U.S.C. § 1141.

- ii. *LTR Properties, Inc. (“LTR”)* – The managing member of, and 50% interest holder in, Tellico Landing. LTR Properties, Inc. is 100% owned and operated by Mike Ross.
- iii. *Mike Ross* – Sole principal of LTR Properties, Inc. and high-profile real estate development known mostly for his “Rarity” property developments across East Tennessee. Ross takes a leading role in this case, with Robert Stooksbury his frequent adversary.
- iv. *Robert Stooksbury* – Member of, and 25% interest holder in, Tellico Landing. Stooksbury has initiated state and federal lawsuits naming Ross as a defendant before the start of Tellico Landing’s bankruptcy case. To say that Stooksbury and Ross had a “falling out” as business partners is an understatement.
- v. *Ward Whelchel* – Member of, and 25% interest holder in, Tellico Landing. Whelchel is not an active participant in the case, mostly because he wished to stay out of it.
- vi. *WindRiver Investments, LLC (“WindRiver”)* – Tellico Landing’s largest creditor during the bankruptcy proceeding.
- vii. *Athena* – A South Carolina limited liability company that enters the scene late in the case, suggesting that it acquire all of LTR’s assets.
- viii. *Resident Group Members* – Home purchasers in Tellico Landing’s Rarity Pointe Development. Resident Group Members filed a lawsuit within Tellico Landing’s bankruptcy proceeding, alleging that Ross, through LTR, used deposits of Resident Group Members, paid specifically for the construction of community amenities, on other projects.

c. *Timeline of Major Events*

- June 2011 – Tellico Landing files for Chapter 11 bankruptcy protection.
- July 2011 – Stooksbury requests relief from stay; claims are filed; Judge Stair recuses himself and Judge Parsons steps in.
- August 2011 – Business as usual; Tellico Landing files grim operating reports.
- September 2011 – Tellico Landing makes a big push for DIP financing; WindRiver wants a trustee appointed in the case.

- October 2011 – First reorganization plan filed with disclosure statement; objections roll in.
- November 2011 – Responses given to Resident Group adversary proceeding; WindRiver requests relief from stay.
- December 2011 – Second reorganization plan filed with disclosure statement; Tellico Landing renews its request for DIP financing.
- January 2012 – WindRiver is denied relief from stay.
- February 2012 – Tellico Landing finally receives DIP financing.
- March 2012 – Amended second reorganization plan filed; objections roll in; parties file separate motions to dismiss the case.
- April 2012 – Stooksbury replies to Tellico Landing’s responses to his motion to dismiss the case.
- May 2012 – Motion to dismiss granted.
- June 2012 – WindRiver forecloses and wins bid for the property.
- July 2012 to 2015 – Rarity Pointe renamed WindRiver; now operating successfully.

II. Pre-filing Considerations

Tellico Landing, LLC (“Tellico Landing”), was created in 2001 to develop a tract of land in Loudon County, Tennessee, into a residential and golf development known as Rarity Pointe.³⁶ Tellico Landing was comprised of Mike Ross, as LTR Properties, Inc. (“LTR”), Robert Stooksbury Jr., and Ward Whelchel.³⁷ Ross owned a 50% interest.³⁸ Stooksbury and Whelchel each owned 25% interests.³⁹ LTR was the managing member of Tellico Landing.⁴⁰ At this time,

³⁶ Hugh Willett, *Rarity Point Developer faces suit*, KNOXVILLE NEWS SENTINEL, Apr. 2, 2009, <http://www.knoxnews.com/business/rarity-pointe-developer-faces-suit>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Mike Ross was making a name for himself by developing “an empire of upscale residential projects across East Tennessee.”⁴¹ To finance the development of Rarity Pointe, Tellico Landing got financing from SunTrust Bank.⁴²

In the spring of 2002, Tellico Landing executed a contract for the transfer of a part of approximately 540 acres of land (“Property”) to LTR.⁴³ Under the terms of the contract, LTR would construct a golf course on the property at LTR’s sole expense.⁴⁴ Upon the golf course’s completion, Tellico Landing would transfer the golf course to LTR.⁴⁵ As compensation for management services, LTR would receive 12% of the gross sales price for each sale of real estate in the Property.⁴⁶

Each lot on the Property was sold subject to a covenant to pay an initial deposit for privileges of the “Rarity Pointe Club.”⁴⁷ These deposits, however, did not entitle lot purchasers to use the golfing facilities.⁴⁸

⁴⁰ Robert Stooksbury’s Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing at 18, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 248, Exhibit 2).

⁴¹ Josh Flory, *Rarity developer Mike Ross indicted by federal authorities*, KNOXVILLE NEWS SENTINEL, Nov. 30, 2012, <http://www.knoxnews.com/business/rarity-developer-mike-ross-indicted-by-federal>.

⁴² Josh Flory, *Rarity Pointe Auction latest in series*, KNOXVILLE NEWS SENTINEL, Jun. 14, 2011, <http://www.knoxnews.com/business/rarity-pointe-auction-latest-in-series>.

⁴³ WindRiver’s Memorandum in Support of WindRiver Investments LLC’s Motion for the Appointment of a Trustee at Exhibit 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 33).

⁴⁴ WindRiver’s Memorandum in Support of WindRiver Investments LLC’s Motion for the Appointment of a Trustee, *supra* note 43, at Exhibit 1.

⁴⁵ WindRiver’s Memorandum in Support of WindRiver Investments LLC’s Motion for the Appointment of a Trustee, *supra* note 43, at Exhibit 1.

⁴⁶ WindRiver’s Memorandum in Support of WindRiver Investments LLC’s Motion for the Appointment of a Trustee, *supra* note 43, at Exhibit 1.

⁴⁷ WindRiver’s Memorandum in Support of WindRiver Investments LLC’s Motion for the Appointment of a Trustee, *supra* note 43, at Exhibit 2 para. 14.10.

⁴⁸ WindRiver’s Memorandum in Support of WindRiver Investments LLC’s Motion for the Appointment of a Trustee, *supra* note 43, at Exhibit 2 para. 14.10.

In 2009, Tellico Landing member Stooksbury sued Ross individually, along with a host of other entities with ties to Ross, in federal court.⁴⁹ This lawsuit accused Ross (and LTR) of violating civil RICO provisions and a host of state laws in part by failing to build the golf course as contractually promised and using Tellico Landing funds to construct the golf course in contravention of LTR's promise to build the golf course at LTR's sole expense.⁵⁰ Stooksbury eventually obtained a default judgment in his federal suit against Ross based on Ross's failure to comply with court discovery orders.⁵¹ Stooksbury additionally filed a lawsuit seeking Tellico Landing's dissolution.⁵²

Later, federal authorities would indict Ross.⁵³ The indictment would allege that Ross, in multiple residential real estate developments, diverted deposits from buyers that were supposed to be spent constructing certain facilities and instead applied the deposits "for use in other real estate ventures."⁵⁴ Federal authorities would eventually drop the charges, citing the discovery of "new exculpatory evidence."⁵⁵

Ross felt the wrath of the real estate bubble's burst, as his portfolio of real estate development interests took a pinch.⁵⁶ This led to a number of lawsuits and foreclosures.⁵⁷ One of these foreclosures was to take place on July 1, 2011: the foreclosure on Tellico Landing's Rarity Pointe development.⁵⁸ WindRiver Investment, LLC ("WindRiver"), who had just recently

⁴⁹ Complaint at 1, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498-TAV-HBG (E.D. Tenn. Nov. 18, 2009) (No. 250).

⁵⁰ *See generally* Complaint, *supra* note 49, at 1.

⁵¹ Order of Default Judgment at 1-2, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498-TAV-HBG (E.D. Tenn. Nov. 18, 2009) (No. 250).

⁵² *See* Motion of Robert T. Stooksbury, Jr. for Relief from Stay, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 10).

⁵³ Josh Flory, *Rarity developer Mike Ross indicted by federal authorities*, KNOXVILLE NEWS SENTINEL, Nov. 30, 2012, <http://www.knoxnews.com/business/rarity-developer-mike-ross-indicted-by-federal>.

⁵⁴ *Id.*

⁵⁵ Josh Flory, *Government drops criminal case against Mike Ross*, KNOXVILLE NEWS SENTINEL, May 23, 2013, <http://www.knoxnews.com/business/government-moves-drop-criminal-case-against-mike-r>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Josh Flory, *Rarity Pointe Auction latest in series*, KNOXVILLE NEWS SENTINEL, Jun. 14, 2011, <http://www.knoxnews.com/business/rarity-pointe-auction-latest-in-series>.

acquired SunTrust's debt in Rarity Pointe, brought the foreclosure action.⁵⁹ According to Tellico Landing's attorney, Tellico Landing was at this point "land-rich and cash-poor."⁶⁰ Just days before the scheduled foreclosure, Ross turned to the bankruptcy code.⁶¹

III. Filing, First-day Orders, and Litigation

a. *The Petition*

Tellico Landing filed its voluntary petition in the U.S. Bankruptcy Court for the Eastern District of Tennessee on June 27, 2011. At the time of filing, it averred that its debts were "primarily business debts" and that it "estimate[d] that funds will be available for distribution to unsecured creditors,"⁶² of which it averred there were less than fifty. The petition and supporting documentation described Tellico's current ownership interests as LTR Properties (50% ownership), Robert Stooksbury (25%), and Ward Welchel (25%).⁶³ Tellico reported recent gross income at approximately \$65,000 for 2010 and less than \$30,000 for 2011.⁶⁴

Tellico Landing's petition set out in its schedule of total assets and liabilities the following:

Real property	\$30,150,000.00
Personal property	\$10,294,352.00
Secured creditors' claims	\$6,738,160.00
Unsecured priority claims	\$348,244.00
Unsecured non-priority claims	\$1,446,051.13

Specifically, the company listed its real property assets as "Rarity Point Resort," with 204 residential lots, vacant land, golf course, and "Discovery Center" worth \$30 Million (with a secured claim north of \$6.5 Million), as well as a separate rental home valued at \$150,000.00.⁶⁵

⁵⁹ Josh Flory, *Late move by Rarity Pointe development firm cancels auction*, KNOXVILLE NEW SENTINEL, Jul. 1, 2011, <http://www.knoxnews.com/business/late-move-raritypointe-development-firm-cancels-a>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Voluntary Petition at 1, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 1).

⁶³ Voluntary Petition, *supra* note 62, at 10. *See also* List of Equity Security Holders at 1, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 4).

⁶⁴ Voluntary Petition, *supra* note 62, at 4.

⁶⁵ Voluntary Petition, *supra* note 62, at 14.

Also listed were accounts receivable valued north of \$10 Million.⁶⁶ The unsecured priority claims were exclusively back taxes owed on Tellico Landing to Loudon County and the State of Tennessee.⁶⁷ Unsecured non-priority claims amounted to miscellaneous fees accrued for legal work, street paving, signage, and property management.⁶⁸ All told, Tellico Landing filed with total assets of \$40,444,352.00 accompanied by a mere \$8,532,455.13 in total liabilities. As you will see, Tellico Landing's assets would lose value—and quickly.

Dissension among the ranks was evident with even a cursory glance at the petition. Interestingly enough, Tellico Landing included in its petition under “personal property” a claim described as a “[p]ossible cause of action for breach of fiduciary duty of one of the members, Robert Stooksbury,” listing an unknown value for that claim.⁶⁹ Meanwhile, a company called WindRiver Investments, LLC, out of Knoxville, was listed as the central secured creditor. WindRiver had “purportedly” acquired a secured interest in Tellico Landing's real properties (the resort, golf course, etc.) in June 2011 and held a first mortgage on those properties.⁷⁰ WindRiver also held a secured interest in the rental home that Tellico owned. Of course, Tellico noted on its petition that it disputed WindRiver's secured claim, which was valued north of \$6.5 Million.

In the petition, Tellico Landing noted that Lynn Tarpay of Hagood, Tarpay & Cox, PLLC, of Knoxville, would serve as debtor's counsel.⁷¹ Tellico filed a Notice of Creditors Meeting with its petition, calling the meeting for one month later, on July 27, 2011 in Knoxville.⁷² The

⁶⁶ Voluntary Petition, *supra* note 62, at 16.

⁶⁷ Voluntary Petition, *supra* note 62, at 20.

⁶⁸ Voluntary Petition, *supra* note 62, at 21. Notably, a substantial portion of the unsecured nonpriority claims were listed as reimbursements owed to none other than the three Tellico members: Ross, Welchel, and Stooksbury. *Id.* at 21-22.

⁶⁹ Voluntary Petition, *supra* note 62, at 17.

⁷⁰ Voluntary Petition, *supra* note 62, at 18.

⁷¹ *See generally* Voluntary Petition, *supra* note 62. *See also* Application to Employ Counsel, In re Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 9) (noting that Hagood, Tarpay & Cox, PLLC has 28 years of bankruptcy experience and would serve as general debtor's counsel for \$20,000). The application was approved on July 19, 2011. Order Approving Application of Employment of Counsel, In re Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 15).

⁷² Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines at 1, In re Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 6) [hereinafter Notice of Creditors Meeting].

meeting notice set the deadline for filing proof of creditor claims at October 25, 2011.⁷³ As stated in the notice, the petition filing prohibits creditors from taking collection actions, a debtor protection known as the automatic stay.⁷⁴ Moreover, the notice stated that, while creditors' attendance is not mandatory, the debtor's representatives *must* be present at the creditors meeting "to be questioned under oath by the trustee and by creditors," requirements of § 341 of the Code.⁷⁵

After Ross filed the Chapter 11 petition, an attorney for Stooksbury hinted at a suspicion that this particular petition was filed "merely [as] an effort to delay foreclosure."⁷⁶ Just months before, Ross filed Chapter 11 petitions on behalf of some of his other real estate developments, also days before their respective foreclosures.⁷⁷

b. Post-Petition

Generally speaking, once a Chapter 11 debtor files its petition and manages any first-day orders, the case often slows down. During this slow-down period, which is often phrased as returning to "business as usual," the company's operation is anything but normal. While the DIP must attempt to operate its business(es) in a fashion so as to preserve the going concern, the DIP must simultaneously meet the requirements of the Code. Although seemingly calm on the surface, this period of a bankruptcy case can be busier than the first days after filing due to the Bankruptcy Rules' and Code's demands.

But Tellico Landing's bankruptcy story became chaotic, and quickly. Thus, the filing and resolution of the various motions and claims are best told chronologically. From here, the authors have elected to outline the action on a month-to-month basis.

c. "First-day Orders" and How the Case Unfolded

A. July

On July 6, 2011, just nine days after Tellico Landing filed its petition, Stooksbury filed the first motion for relief from stay.⁷⁸ In his motion, Stooksbury requested the automatic stay to

⁷³ Notice of Creditors Meeting, *supra* note 72, at 1.

⁷⁴ Notice of Creditors Meeting, *supra* note 72, at 2. *See also* 11 U.S.C. § 362.

⁷⁵ Notice of Creditors Meeting, *supra* note 72, at 2. *See also* 11 U.S.C. § 341.

⁷⁶ Josh Flory, *Late move by Rarity Pointe development firm cancels auction*, KNOXVILLE NEW SENTINEL, Jul. 1, 2011, <http://www.knoxnews.com/business/late-move-rarity-pointe-development-firm-cancels-a>.

⁷⁷ *Id.*

⁷⁸ Motion of Robert T. Stooksbury, Jr. for Relief from Stay, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 10) [hereinafter Stooksbury Relief from Stay].

be lifted “to allow the parties to the two referenced lawsuits to proceed with discovery, or in the alternative to allow for the termination of the consolidation of the two lawsuits in order for the lawsuit, in which the debtor is not a party, to proceed.”⁷⁹ The “two lawsuits” referenced were (1) an action that Stooksbury filed in 2009 in Blount County Chancery Court against LTR Properties, Inc. for the dissolution of Tellico; and (2) a separate action that Stooksbury filed in 2009 in the same court against Ross, LTR Properties, RPL Properties LLC, LC Development Company LLC, and Rarity Management Company LLC.⁸⁰ Because these two cases had previously been consolidated in 2009, Stooksbury needed the court to either lift the stay or terminate the consolidation so he could proceed with his case pending against Ross, LTR, and other entities, in which Tellico was not included.⁸¹

On July 8, 2011, WindRiver initiated two state court actions against Ross seeking to enforce personal guarantees Ross signed as security for Tellico Landing’s debt, which WindRiver had recently acquired.⁸²

Stooksbury’s Motion for Relief from Stay was granted on July 29, allowing for discovery and unconsolidation in both of the Blount County lawsuits.⁸³

1. A Note on Claims

Once a bankruptcy proceeding is initiated, a major focus of the proceeding involves “the establishment and determination of claims against the debtor and its property.”⁸⁴ To establish a

⁷⁹ Stooksbury Relief from Stay, *supra* note 78, at 1.

⁸⁰ Stooksbury Relief from Stay, *supra* note 78, at 1-2. These lawsuits were docketed as Nos. 09-050 and 09-057, respectively. Tellico apparently had already filed an Answer in suit No. 09-050. *Id.* at 1.

⁸¹ Stooksbury Relief from Stay, *supra* note 78, at 2. In essence, Stooksbury wanted to be able to proceed with discovery in case No. 09-057, which was locked down by Tellico Landing’s Chapter 11 filing.

⁸² Verified Complaint for Injunctive Relief at Exhibit 1 pp. 3-6 and Exhibit 2 pp. 3-6, Tellico Landing, LLC v. WindRiver Investment, LLC, No. 3:11-ap-03205 (Bankr. E.D. Tenn. Aug. 22, 2011) (No. 1).

⁸³ Order Approving Motion of Robert T. Stooksbury, Jr. for Relief from Stay, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 21).

⁸⁴ W. HOMER DRAKE JR. & CHRISTOPHER STRICKLAND, CHAPTER 11 REORGANIZATION § 10:1 (2d ed. 2014), *available at* WestlawNext Bankruptcy Texts & Treatises.

claim, a creditor may file a “proof of claim” in the proceeding.⁸⁵ If a creditor does not file a proof of claim, the debtor or trustee may file a claim on the creditor’s behalf.⁸⁶

The Code broadly defines “claim.” Specifically, “claim” means a

- (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.⁸⁷

In Chapter 11, “[a] proof of claim or interest is deemed filed” if it is listed in the debtor’s schedule of liabilities unless the schedule lists the claim or interest “as disputed, contingent, or unliquidated.”⁸⁸ If the schedule does not list a claim “as disputed, contingent, or unliquidated,” the debtor’s schedule shall be “prima facie evidence of the validity and amount to the claim[.]”⁸⁹ If the debtor’s schedule does not list a claim or lists it as disputed, contingent, or unliquidated, the creditor must file a proof of claim.⁹⁰ Failure to do so will result in loss of creditor status “with respect to such claim for the purposes of voting and distribution.”⁹¹ If the debtor’s schedule does list the claim of a creditor, a creditor may supersede the scheduling of that claim by filing its own proof of claim.⁹² In Chapter 11, the court will fix the time for filing claims, which may be extended under certain conditions.⁹³

In *Tellico Landing’s* case, claims started rolling in soon after the petition was filed. The first two claims filed were for unsecured priority tax claims⁹⁴ by the Loudon County Trustee and

⁸⁵ 11 U.S.C. § 501.

⁸⁶ *Id.*

⁸⁷ *Id.* at § 101(5).

⁸⁸ *Id.* at § 1111(a).

⁸⁹ FED. R. BANKR. P. 3003(b)(1).

⁹⁰ *Id.* at 3003(b)(1), (c)(2).

⁹¹ *Id.* at 3003(c)(2).

⁹² *Id.* at 3003(c)(4).

⁹³ *Id.*

⁹⁴ 11 U.S.C. § 507(a)(8) gives priority to unsecured government claims generally “to the extent that such claims are for” certain taxes.

the Tennessee Department of Revenue on July 8, 2011, and July 18, 2011, for \$70,722.00 and \$129,280.99, respectively.⁹⁵ The Tennessee Department of Revenue also claimed \$27,070.21 as an unsecured nonpriority claim for late fees.⁹⁶ For almost three months, these were the only claims filed against Tellico Landing.

On July 28, 2011, U.S. Bankruptcy Judge Richard Stair, Jr.'s recused himself from the case.⁹⁷ In his place, Judge Stair ordered that all future matters would be heard by Judge Marcia Phillip Parsons.⁹⁸ The court also appointed a U.S. Trustee in place of a creditors committee, noting that an "insufficient number" of unsecured creditors were interested in forming a committee.⁹⁹

B. August

One of the administrative obligations of any DIP is to file monthly operating reports showing, among other things, the DIP's profitability and cash flow.¹⁰⁰ On August 25, 2011, Tellico Landing filed its first few monthly operating reports for the June and July operating periods.¹⁰¹ These reports showed that no executive wages had been paid, that no property had been sold or transferred (other than in the ordinary course of business), and that Tellico Landing had made almost no profit.¹⁰²

⁹⁵ Loudon County Trustee Proof of Claim at 1, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim 1-2); Tenn. Dept. of Rev. Proof of Claim at 1, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim 2-2).

⁹⁶ Tenn. Dept. of Rev. Proof of Claim at 1, 3, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim 2-2).

⁹⁷ Order of Recusal of Judge Stair and Appointment of Judge Parsons, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 18).

⁹⁸ Order of Recusal of Judge Stair and Appointment of Judge Parsons, *supra* note 97.

⁹⁹ Notice of U.S. Trustee That No Committee of Unsecured Creditors Will Be Appointed, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 13).

¹⁰⁰ 11 U.S.C. § 308. *See also* FED. R. BANKR. P. 2015.

¹⁰¹ Debtor's Monthly Operating Report for the Period Ending June 2011, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 26); Debtor's Monthly Operating Report for the Period Ending July 2011, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 27).

¹⁰² Debtor's Monthly Operating Reports for the Period Ending June 2011 and July 2011, *supra* note 101.

Although Stooksbury, who earlier gained relief from the stay, successfully limited some of the Code’s protections to Tellico Landing, Tellico Landing later sought to expand the Code’s protections from protecting itself to also protect Ross individually. On August 22, 2011, Tellico Landing initiated an adversary proceeding against WindRiver seeking to enjoin WindRiver from enforcing against Ross the personal guarantees Ross signed on Tellico Landing’s behalf.¹⁰³ Adversary proceedings, discussed more below, are separate and distinct lawsuits that occur within the forum of bankruptcy court.¹⁰⁴ In its complaint, Tellico Landing acknowledged that Ross personally guaranteed Tellico Landing’s debt.¹⁰⁵ However, Tellico stated that Ross was Tellico Landing’s key representative, would “be instrumental in proposing a confirmable plan,” and “should be temporarily protected from the lawsuit filed by WindRiver in order to enable him to devote most of his full time and energy to the affairs of Tellico Landing[’s]” bankruptcy proceeding.¹⁰⁶

C. September: Things Heat Up

Tellico Landing needed cash, one thing no business—Chapter 11 debtor or not—can live without.¹⁰⁷ Because Tellico was “land-rich and cash-poor,”¹⁰⁸ it was going to have to obtain outside financing to have any chance of turning Rarity Pointe around. To induce lenders to extend financing to Chapter 11 debtors, the Code provides several measures to provide lenders assurance that they will recoup whatever they loan to a debtor.¹⁰⁹ These measures generally give a lender (“DIP financier”) various levels of priority over other creditors.¹¹⁰ The most valuable

¹⁰³ Verified Complaint for Injunctive Relief, *supra* note 82, at 1.

¹⁰⁴ Doron Kenter, *What’s the Difference Between a Contested Matter and an Adversary Proceeding Anyway?*, BANKR. BLOG, Feb. 28, 2014, <http://business-financerestructuring.weil.com/executory-contracts/whats-the-difference-between-a-contested-matter-and-an-adversary-proceeding-anyway/>.

¹⁰⁵ Verified Complaint for Injunctive Relief, *supra* note 82, at 2-3.

¹⁰⁶ Verified Complaint for Injunctive Relief, *supra* note 82, at 3-4.

¹⁰⁷ Bob Eisenbach, *DIP Financing: How Chapter 11’s Bankruptcy Loan Rules Can Be Used To Help A Business Access Liquidity*, IN THE (RED)®: THE BUSINESS BANKRUPTCY BLOG (Apr. 2, 2015 10:51 AM), <http://bankruptcy.cooley.com/2013/11/articles/business-bankruptcy-issues/dip-financing-how-chapter-11s-bankruptcy-loan-rules-can-be-used-to-help-a-business-accessliquidity/>.

¹⁰⁸ Josh Flory, *Late move by Rarity Pointe development firm cancels auction*, KNOXVILLE NEW SENTINEL (Jul. 1, 2011), <http://www.knoxnews.com/business/late-move-rarity-pointe-development-firm-cancels-a>.

¹⁰⁹ Eisenbach, *supra* note 107.

¹¹⁰ See 11 U.S.C. § 364(b)-(d).

inducement is Code § 364(d), which allows a bankruptcy court to “authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate if” credit is otherwise unavailable to a debtor *and* the current senior lien holder is adequately protected.¹¹¹ What this means is that if a debtor cannot obtain credit on other terms, a DIP lender can secure a loan to the debtor with a lien superior or equal to any pre-existing lien on property of the estate as long as any original secured creditor(s) is/are adequately protected.

On September 12, 2011, Tellico Landing filed its first motion for DIP financing pursuant to § 364 of the Code, and asked for an expedited hearing on the issue.¹¹² Tellico Landing stated that it owns the Rarity Pointe real property valued at \$30 million and owes WindRiver its principal investment of approximately \$6.7 million, a debt secured by a first priority lien on the Rarity Pointe real property.¹¹³ Tellico Landing argued in its motion that it required an additional \$2.75 million to reorganize to “aggressively market” its lots for sale that Tellico Landing estimated would bring in gross revenue of approximately \$22 million.¹¹⁴ Tellico Landing stated that it had obtained conditional financing from Heritage Solutions, LLC, in the amount of \$2.75 million, a deal which would provide Heritage Solutions with a superpriority lien on the Rarity Pointe real estate.¹¹⁵ Stating compliance with the rules of adequate protection when affecting another creditor’s interest, Tellico Landing averred that WindRiver’s principal investment was adequately protected by the \$30 million value of the Rarity Pointe real estate.¹¹⁶ Tellico Landing amended its motion for DIP financing on September 19, 2011. However, the terms in the amendment are indistinguishable from Tellico Landing’s initial motion for DIP financing.¹¹⁷

Days later on September 14, 2011, WindRiver filed a motion under § 1104 requesting that the court order the U.S. Trustee to appoint a Chapter 11 trustee to the Tellico Landing

¹¹¹ 11 U.S.C. § 364(d) (emphasis added).

¹¹² Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 28) [hereinafter Motion for DIP Financing]; Motion for Expedited Hearing on Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 31).

¹¹³ Motion for DIP Financing, *supra* note 112.

¹¹⁴ Motion for DIP Financing, *supra* note 112, at 2.

¹¹⁵ Motion for DIP Financing, *supra* note 112, at 2.

¹¹⁶ Motion for DIP Financing, *supra* note 112, at 2-3.

¹¹⁷ *Compare* Motion for DIP Financing, *supra* note 112, at 2-3, with Amended Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien at 2-3, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 36) [hereinafter Amended Motion for DIP Financing].

estate.¹¹⁸ Section 1104 permits a party in interest, such as WindRiver, to request that the court order the appointment of a trustee “at any time after the commencement of the case but before [plan] confirmation” either for cause (e.g. fraud, dishonesty, gross mismanagement) or if the appointment is in the parties’ and estates’ best interest.¹¹⁹ In its supporting memorandum, WindRiver stated that it was requesting a trustee “for cause” because of LTR/Ross’s fraudulent actions—to wit, the collection of membership dues for a clubhouse that was never built.¹²⁰

The next day, WindRiver also moved the court to subject Tellico Landing to the “single asset real estate” provisions of § 362(d)(3).¹²¹ The Bankruptcy Code defines single asset real estate (“SARE”) cases as “a single property or project, other than residential real property with fewer than four residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental.”¹²² Generally speaking, SARE bankruptcies will not be afforded the full automatic stay awarded to debtors under a normal Chapter 11 filing.¹²³ For example, courts may condition the stay upon a SARE debtor quickly filing a reorganization plan “that has a reasonable possibility of being confirmed

¹¹⁸ WindRiver Investments, LLC’s Motion for the Appointment of a Trustee, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 32).

¹¹⁹ 11 U.S.C. § 1104.

¹²⁰ Memorandum in Support of WindRiver Investments, LLC’s Motion for the Appointment of a Trustee at 3, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 33).

¹²¹ WindRiver Investments, LLC’s Motion for the Entry of an Order Determining that the Debtor is Subject to the “Single Asset Real Estate” Provisions of 11 U.S.C. § 362(d)(3), *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 34).

¹²² 11 U.S.C. § 101(51B).

¹²³ The Code’s provisions dealing with SARE cases grew out of perceived abuses of the Code by real estate owners who filed Chapter 11 solely to avoid foreclosure (and its resulting tax effects). Dale C. Schian, *Bankruptcy: The Nature of Single Asset Real Estate*, SCHIAN WALKER, Mar. 30, 2014, <http://www.schianwalker.com/articles/single-asset-real-estate.htm>. Particularly in the 1980s, “a real estate crisis (sound familiar? –Eds.) led many single asset real estate entities to” file Chapter 11 petitions, “clogg[ing] the bankruptcy courts” in some judges’ eyes. *Id.* Debtors at this time often filed these bankruptcies hoping to use the stay’s protection to ride out the downturn and “captur[e] the benefits of a market reversal.” *Id.* Consequently, many commentators “point[ed] out that the traditional policy justifications for bankruptcy, such as preserving going concern value, jobs, and providing an orderly distribution to a diverse body of creditors” do not apply to SARE cases. While the court never rules on WindRiver’s motion to subject this case to the Code’s SARE provisions, ask yourself whether this case fits the typical SARE scenario – a last-minute attempt to starve off pending foreclosure on the (realistic or not) hope that the real estate market reverses itself before the end of the proceeding.

within a reasonable time” or instead make interest payments adequate to compensate a lender with a lien upon the debtor’s real estate for the duration of the bankruptcy proceeding.¹²⁴

In its memorandum supporting its motion to subject Tellico Landing to the SARE provisions, WindRiver argued that Tellico Landing’s Rarity Pointe development is “clear[ly] . . . one distinct tract” and, thus, the court should grant relief from the automatic stay within 90 days unless Tellico Landing has filed a reorganization plan “that has a reasonable possibility of being confirmed” or makes monthly interest payments to its secured creditors.¹²⁵ WindRiver also pointed to precedent showing that single *projects*, not just single properties, should be classified as SARE under the Code.¹²⁶ The parties later jointly agreed to continue a hearing on the SARE determination (as well as the hearing on the appointment of a trustee) until October 24, 2011.¹²⁷

1. WindRiver Responds to Tellico Landing’s Attempt to Shield Ross Personally

On September 21, 2011, WindRiver answered Tellico Landing’s adversary complaint to enjoin it from Ross’s personal guarantee of Tellico Landing’s debt. In its answer, WindRiver countered that the state court actions enforcing the personal guarantee would be simple, especially because Ross admitted that he was liable for Tellico Landing’s debt.¹²⁸ Thus, WindRiver asserted that the actions would require little time.¹²⁹ WindRiver additionally noted that Ross had been involved in litigation with Stooksbury for years and that Ross had delayed these proceedings.¹³⁰ Indeed, WindRiver attached a state trial court order imposing sanctions

¹²⁴ See 11 U.S.C. § 362(d)(3).

¹²⁵ Memorandum of Law in Support of WindRiver Investments, LLC’s Motion for the Entry of an Order Determining that the Debtor is Subject to the “Single Asset Real Estate” Provisions of 11 U.S.C. § 362(d)(3) at 3, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 35) [hereinafter Memorandum of Law in Support of WindRiver’s SARE Motion]; Tellico ultimately filed its first Plan of Reorganization on October 4, 2011, which was 99 days after its petition filing.

¹²⁶ Memorandum of Law in Support of WindRiver’s SARE Motion, *supra* note 125, at 3 (citing *In re Webb Mtn.*, 2008 WL 656271, at *4 (Bankr. E.D. Tenn. 2008)). See also *In re Pensignorkay, Inc.*, 204 B.R. 676, 681-82 (Bankr. E.D. Pa. 1997) (“[A] tract of undeveloped land . . . that the Debtor acquired with the intention of creating subdivided parcels suitable for building and development . . . constitutes a ‘single property or project.’”).

¹²⁷ Order Continuing the Hearings on the Motion to Appoint a Trustee and SARE Determination, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 58).

¹²⁸ WindRiver Answer at 4, *Tellico Landing, LLC v. WindRiver Investment, LLC*, No. 3:11-ap-03205 (Bankr. E.D. Tenn. Aug. 22, 2011) (No. 8).

¹²⁹ WindRiver Answer, *supra* note 128, at 4. ¹³⁰ WindRiver Answer, *supra* note 128, at 4.

against Ross for failing to respond to discovery requests for over two years.¹³¹ Consequently, in WindRiver's view, its present action would require substantially less of Ross's time than the lawsuits that Ross had already been involved in at the time he filed Tellico's Chapter 11 petition.¹³² Tellico Landing and WindRiver would eventually agree to dismissal of this proceeding.¹³³

On September 23, 2009, the first of several waves of additional claims crashed onto Tellico Landing's shores.¹³⁴ The first of these claims, filed upon behalf of a trust benefiting Bill and Ann Addison, arose out the payment of a \$20,000 "social membership" fee upon their purchase of a lot in the Rarity Pointe development.¹³⁵ The proof of claim alleged that at the time of sale, Tellico promised this fee was to be applied to the construction of common amenities in Rarity Pointe, such as a pool, fitness center, and tennis courts, which would be available to all Rarity Pointe social club members.¹³⁶ The proof of claim further alleged that the social membership fee was not applied toward the construction of community amenities, but rather used to construct the golf course in Rarity Pointe, to which Rarity Pointe residents had no privilege of use resulting from payment of the social membership fee.¹³⁷

The Addisons were not alone.¹³⁸ Knoxville Attorney F. Scott Milligan entered his notice of appearance in the bankruptcy proceeding on Sept. 23, 2009,¹³⁹ and filed proofs of claim upon behalf of the Addisons as well as twelve other claimants.¹⁴⁰ Eventually, Milligan would file claims for a total of 79 claimants, totaling in \$1,687,500 in unsecured claims against Tellico

¹³¹ WindRiver Answer, *supra* note 128, at Exhibit 1 p.4.

¹³² WindRiver Answer, *supra* note 128, at 4.

¹³³ Stipulation of Voluntary Dismissal at 1, Tellico Landing, LLC v. WindRiver Investments, LLC, No. 3:11-ap-03205 (Bankr. E.D. Tenn. Aug. 22, 2011) (No. 17).

¹³⁴ See, e.g., Addison Electing Small Bus. Trust Proof of Claim at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim 3-1).

¹³⁵ Addison Electing Small Bus. Trust Proof of Claim, *supra* note 134, at 3.

¹³⁶ Addison Electing Small Bus. Trust Proof of Claim, *supra* note 134, at 3.

¹³⁷ Addison Electing Small Bus. Trust Proof of Claim, *supra* note 134, at 3.

¹³⁸ See generally *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claims No. 4-59; 60-78; 82-86).

¹³⁹ F. Scott Milligan Notice of Appearance at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 41).

¹⁴⁰ See generally *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claims No. 3-1 to 15-1).

Landing.¹⁴¹ Two property owners, Robert and Lynn Mauer and Gregory and Kathleen Horn, would file social membership fee claims on their own behalf.¹⁴²

Aside from the social membership fee claimants, few other proofs of claims would be filed. WindRiver filed a proof of claim for the amount of secured debt it held against Tellico.¹⁴³ The Knoxville law firm Long, Ragsdale & Waters filed the last proof of claim for unpaid legal fees.¹⁴⁴ The Tennessee Department of Revenue filed a request for payment as an administrative expense tax that was incurred since the initiation of the bankruptcy proceeding.¹⁴⁵ Though technically not a “claim” but, rather, an “administrative expense,” the department’s request for payment of taxes, like a proof of claim, added to the list of monetary demands against Tellico Landing.

D. October: Boiling Over

Tellico Landing kicked off October by filing its first reorganization plan and accompanying disclosure statement, filing its first objections to the Resident Group Member claims, and responding to WindRiver’s motion to appoint a trustee. Tellico Landing accomplished this feat in October’s first week.

1. *Tellico Landing’s Reorganization Plan*

Tellico Landing filed its first plan on October 4, 2011.¹⁴⁶ The development and confirmation of a Chapter 11 plan lies at the heart of the Chapter 11 process. Generally, with some exceptions, a confirmed Chapter 11 plan discharges a debtor from debts arising before the date of a plan’s confirmation.¹⁴⁷ A plan must separate creditors into classes of similarly situated claims and give each class as least as much as the class would receive if the debtor’s business

¹⁴¹ See generally *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claims No. 4-58; 60-78; 82-86).

¹⁴² Robert and Lynn Mauer Proof of Claim at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim No. 59-1); Gregory and Kathleen Horn Proof of Claim at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim No. 82-1).

¹⁴³ WindRiver Proof of Claim at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim No. 81-1).

¹⁴⁴ Long, Ragsdale & Waters Proof of Claim at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim No. 88-1).

¹⁴⁵ Tenn. Dept. of Rev. Request for Payment of Administrative Expense at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Claim No. 87-2).

¹⁴⁶ Tellico Landing Plan of Reorganization at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 47).

¹⁴⁷ 11 U.S.C. § 1141(d)(1)(A).

were liquidated.¹⁴⁸ By the Bankruptcy Code’s terms, each class of creditors votes on whether to accept or reject the plan.¹⁴⁹ To accept a plan, a class must vote by at least one-half in number of creditors and two-thirds in amount of the creditors’ claims of the creditors actually voting.¹⁵⁰ However, the Code allows a plan to be “crammed down” on dissenting creditors as long as at least one class of creditors assents to the plan and the plan satisfies each creditor’s claim in full *or* provides that creditors junior in priority to any creditor not paid in full receive nothing under the plan.¹⁵¹ Essentially, this means that claims can only be paid in accordance with their priority level; if a claim is not paid in full, no other junior claim can receive anything.

In its plan, Tellico Landing created ten classes of creditors, of which Tellico Landing designated all but one as “impaired.”¹⁵² The Plan provided that Heritage Solutions, LLC (“Heritage”) would provide up to \$2.75 million in post-petition financing to Tellico Landing, for which Heritage would receive a lien upon the Rarity Pointe senior to that of other creditors, including WindRiver.¹⁵³ In short, Tellico Landing’s plan contemplated that Tellico Landing would use new financing to pay off claims and rejuvenate Rarity Pointe Marketing efforts to generate new revenue to pay everyone in full (except that Tellico Landing still disputed the validity of the Resident Group claims).

Tellico Landing would use its post-petition financing to first pay all Class 1 priority tax claims to Loudon County, Tennessee (the sole member of the plan’s only unimpaired class), in full upon the plan’s confirmation.¹⁵⁴ Tellico Landing also would pay Class 2, the Tennessee Department of Revenue, its tax claim in full over 60 monthly installments.¹⁵⁵ This tax claim would not be discharged until paid in full.¹⁵⁶ Heritage itself was the sole Class 3 creditor, and would be repaid in three years at 8% interest.¹⁵⁷ The plan provided that Tellico Landing would pay WindRiver, the sole Class 4 creditor, the balance of its loan with monthly payments over

¹⁴⁸ *Id.* at § 1129(a).

¹⁴⁹ *Id.* at § 1129(a)(7).

¹⁵⁰ *Id.* at § 1126(c).

¹⁵¹ *Id.* at § 1129(b)(2).

¹⁵² Tellico Landing Plan of Reorganization, *supra* note 146, at 2.

¹⁵³ Tellico Landing Plan of Reorganization, *supra* note 146, at 2-3.

¹⁵⁴ Tellico Landing Plan of Reorganization, *supra* note 146, at 3.

¹⁵⁵ Tellico Landing Plan of Reorganization, *supra* note 146, at 2.

¹⁵⁶ Tellico Landing Plan of Reorganization, *supra* note 146, at 2.

¹⁵⁷ Tellico Landing Plan of Reorganization, *supra* note 146, at 2-3.

five years at 4.25% interest.¹⁵⁸ Should Rarity Pointe sales fail to pay off WindRiver's loan in full after five years, Tellico Landing would refinance to pay off the debt's balance at that time.¹⁵⁹ Upon payment in full, Tellico Landing would convey the golf course to LTR.¹⁶⁰

Tellico Landing would pay Class 5 unsecured non-insider creditors (APAC Atlantic, Inc., Long, Ragsdale & Waters, P.C., and Sung Sign Graphics) in full via monthly payments over 60 months at 4% interest.¹⁶¹ Tellico Landing's principals would fund these payments "to the extent they wish to retain their interests."¹⁶²

Tellico Landing would pay the administrative claims in Class 6 (U.S. Trustee and Tellico's counsel) in full within 30 days of the plan's confirmation.¹⁶³

Tellico Landing would pay Class 7 (unsecured insiders of Tellico) "only after all other creditors are paid in full and in no even before 66 months following the date of confirmation."¹⁶⁴ No interest would accrue on these claims.

Class 8 members (Tellico Landing's principals LTR, Stooksbury, and Whelchel) would "retain their interests . . . only to the extent to which they provide new value to" Tellico.¹⁶⁵ LTR would guarantee repayment to Heritage and Tellico Landing's bankruptcy counsel.¹⁶⁶ If other principals declined to contribute a pro rata share to these costs, their interests were to be reduced accordingly.¹⁶⁷

Tellico Landing, with funding from LTR, would fulfill its obligation to the Class 9 member, Tennessee Valley Authority, to construct a public trail on Tellico Landing's property within two years.¹⁶⁸

¹⁵⁸ Tellico Landing Plan of Reorganization, *supra* note 146, at 3.

¹⁵⁹ Tellico Landing Plan of Reorganization, *supra* note 146, at 3.

¹⁶⁰ Tellico Landing Plan of Reorganization, *supra* note 146, at 3.

¹⁶¹ Tellico Landing Plan of Reorganization, *supra* note 146, at 3.

¹⁶² Tellico Landing Plan of Reorganization, *supra* note 146, at 3.

¹⁶³ Tellico Landing Plan of Reorganization, *supra* note 146, at 4.

¹⁶⁴ Tellico Landing Plan of Reorganization, *supra* note 146, at 4.

¹⁶⁵ Tellico Landing Plan of Reorganization, *supra* note 146, at 4.

¹⁶⁶ Tellico Landing Plan of Reorganization, *supra* note 146, at 4.

¹⁶⁷ Tellico Landing Plan of Reorganization, *supra* note 146, at 4.

¹⁶⁸ Tellico Landing Plan of Reorganization, *supra* note 146, at 4.

Class 10 consisted of the Resident Group members.¹⁶⁹ Tellico Landing would hold deposits from new home sales in escrow until enough money existed to build the amenities.¹⁷⁰ Until then, Rarity Pointe lot owners would have access to the amenities at Rarity Bay.¹⁷¹

The Plan assumed that the liquidation value of Tellico Landing's property was less than the debt WindRiver held—around \$6.7 million according to Tellico Landing—when it filed the plan.¹⁷² Tellico Landing nevertheless believed that its property was worth around \$22 million if developed in the ordinary course of business.¹⁷³ Tellico Landing would continue to explore potential claims against Stooksbury, and would apply any future recovery to pay debts to Heritage and WindRiver.¹⁷⁴

2. *Tellico Landing's Disclosure Statement*

No party may solicit votes accepting or rejecting a plan until the bankruptcy court approves a written disclosure that contains “adequate information” “that would enable [] a hypothetical investor of [each] relevant class [of claims or interests] to make an informed judgment about the plan.”¹⁷⁵ The United States Trustee may object to the adequacy of a disclosure statement, but may not file a plan.¹⁷⁶

In its disclosure statement (“Disclosure”), Tellico Landing described the background on Rarity Pointe, including when Mike Ross joined Tellico through LTR in 2001 and the development and success of Rarity Pointe through the early 2000s.¹⁷⁷ This part of the Disclosure, while perhaps relevant, read mostly as a marketing puff piece. To some extent, this reflects the use of the Disclosure to *induce* “a hypothetical investor” to accept the Plan in conjunction with the Disclosure's official purpose of *informing* “a hypothetical investor” about a plan.¹⁷⁸ Tellico Landing stated that Stooksbury refused to personally guarantee a debt on behalf

¹⁶⁹ Tellico Landing Plan of Reorganization, *supra* note 146, at 5.

¹⁷⁰ Tellico Landing Plan of Reorganization, *supra* note 146, at 5.

¹⁷¹ Tellico Landing Plan of Reorganization, *supra* note 146, at 5-6.

¹⁷² Tellico Landing Plan of Reorganization, *supra* note 146, at 3, 6.

¹⁷³ Tellico Landing Plan of Reorganization, *supra* note 146, at 6.

¹⁷⁴ Tellico Landing Plan of Reorganization, *supra* note 146, at 5.

¹⁷⁵ 11 U.S.C. § 1125(a)(1), (b).

¹⁷⁶ *Id.* at § 307.

¹⁷⁷ *See generally* Tellico Landing Disclosure Statement at 1-12, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 48).

¹⁷⁸ 11 U.S.C. § 1125(a)(1).

of Tellico Landing in 2005, which, according to Tellico Landing, constituted a breach of Tellico Landing's operating agreement.¹⁷⁹ This in turn spurred Ross to construct a golf course to regain positive public perception.¹⁸⁰ Tellico Landing then described the real estate crash's effect on Tellico Landing, and Stooksbury's lawsuits against Ross.¹⁸¹ The Disclosure then largely repeated Tellico Landing's Plan almost verbatim.¹⁸²

3. *Tellico Landing's Claim Objections*

Tellico Landing filed its first claim objections the day after filing its first Plan and Disclosure. Objections are necessary if a debtor-in-possession disputes a claim because once a claim is filed, it "is deemed allowed, unless a party in interest . . . objects."¹⁸³ Parties in interest include creditors, creditors' committees, equity holders', and holders' committees.¹⁸⁴ Objections to allowance of claims must be in writing and filed in the bankruptcy court.¹⁸⁵ A trustee or a debtor in possession has a duty to inspect for, and object to, improper claims.¹⁸⁶

Tellico Landing objected to almost all social membership fee claims as they were filed.¹⁸⁷ Owing to the large number of social membership fee claims, Tellico filed a series of "omnibus objections," which object to more than one claim in each objection.¹⁸⁸ Bankruptcy procedure rules allow omnibus objections where, as here, "the objections are based solely on the grounds that the claims should be disallowed" because of at least one of the eight enumerated reasons, including that filed proofs of claims duplicate other claims and that "they have been filed in the wrong case."¹⁸⁹ In its omnibus objections, Tellico asserted that it "has incurred no debt and

¹⁷⁹ Tellico Landing Disclosure Statement, *supra* note 177, at 17.

¹⁸⁰ Tellico Landing Disclosure Statement, *supra* note 177, at 13.

¹⁸¹ Tellico Landing Disclosure Statement, *supra* note 177, at 15-17.

¹⁸² Tellico Landing Disclosure Statement, *supra* note 177, at 18-24.

¹⁸³ 11 U.S.C. § 502(a).

¹⁸⁴ *Id.* at § 1109.

¹⁸⁵ FED. R. BANKR. P. 3007(a).

¹⁸⁶ 11 U.S.C. § 704(a)(5); 11 U.S.C. § 1106(a)(1).

¹⁸⁷ *See* Tellico Landing Omnibus Objections to Claims, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (Nos. 54; 55; 60; 76; 90; 155).

¹⁸⁸ Tellico Landing Omnibus Objections to Claims, *supra* note 187.

¹⁸⁹ FED. R. BANKR. P. 3007(e). The rule lists eight available reasons for the objections, to wit:

affirms that no money is owed to any of the claimants.”¹⁹⁰ Generally, when objections to claims are made, the bankruptcy court will hold a hearing and determine the validity and amount of such claims.¹⁹¹

4. *Tellico Landing Responds to WindRiver’s Request for a Trustee*

In response to desires for a Trustee to replace Tellico Landing, Tellico Landing responded on October 5, 2011, that it had operated “in the open” where all of its members and its secured creditors could know how membership dues were being used.¹⁹² Tellico also stated that it was deeply affected by the Great Recession of 2007-08 and that all dues collected were unrestricted.¹⁹³ In essence, Tellico Landing felt that the funds it collected could be used for any of the amenities in Rarity Bay, not just the clubhouse construction.¹⁹⁴

In a supplemental motion filed October 13, 2011, WindRiver argued that LTR/Ross had again breached the Golf Course Agreement “by improperly using thousands of dollars of the

-
- (1) they duplicate other claims;
 - (2) they have been filed in the wrong case;
 - (3) they have been amended by subsequently filed proofs of claim;
 - (4) they were not timely filed;
 - (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;
 - (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;
 - (7) they are interests, rather than claims; or
 - (8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.

Id.

¹⁹⁰ Tellico Landing Omnibus Objections to Claims, *supra* note 187.

¹⁹¹ 11 U.S.C. § 502 (b).

¹⁹² Tellico Landing, LLC’s Response to Motion for the Appointment of a Trustee, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 51).

¹⁹³ Tellico Landing, LLC’s Response to Motion for the Appointment of a Trustee, *supra* note 192.

¹⁹⁴ Tellico Landing, LLC’s Response to Motion for the Appointment of a Trustee, *supra* note 192.

Debtor’s funds to pay for numerous expenses related to the golf course,” solidifying LTR/Ross’s “pattern of fraudulent, dishonest, and incompetent” management.¹⁹⁵ By the end of the month, the court had continued WindRiver’s motion hearing on the trustee appointment to late October and then again to November 10, 2011.¹⁹⁶ As you will see, the court never had occasion to rule on WindRiver’s motion.

5. *Resident Group Members File Their Own Adversary Proceeding*

Objections “accompanied by a demand for affirmative relief” proceed not a common “contested matters,” but as “adversary proceedings.”¹⁹⁷ What is the difference? “[A] contested matter involves a contested request for relief in the context of the main bankruptcy proceeding . . . while an adversary proceeding involves the filing of a complaint, commencing” a separate lawsuit within the forum of bankruptcy court.¹⁹⁸ The Federal Rules of Bankruptcy Procedure largely adopt verbatim the Federal Rules of Civil Procedure for adversary proceedings.¹⁹⁹

The social membership fee claimants wanted more than to hold unsecured claims against Tellico; they wanted the amenities they alleged that they were promised.²⁰⁰ Accordingly, on October 14, 2011, fourteen social membership fee claimants (the “Resident Group”) filed an adversary complaint against Tellico Landing.²⁰¹ In the complaint, the Resident Group largely repeated the assertions in the proofs of claim—that is, their social membership fees were improperly used to construct a golf course and marina, which they had no right to use.²⁰² Based on the total number of lots in Rarity Pointe, the Resident Group believed that Ross, through

¹⁹⁵ Supplemental Memorandum in Support of WindRiver Investment LLC’s Motion for the Appointment of a Trustee at 4, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 67).

¹⁹⁶ Order Continuing Hearings on Motions for the Appointment of a Trustee and Determination of the Debtor as a SARE Case, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 58); Order Continuing Hearings on Motions for DIP Financing, Determination of the Debtor as a SARE Case, and Appointment of a Trustee, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 79).

¹⁹⁷ DRAKE & STRICKLAND, *supra* note 84, at § 10:4.

¹⁹⁸ Kenter, *supra* note 104.

¹⁹⁹ See generally FED. R. BANKR. P. 7001–7087.

²⁰⁰ See Adversary Complaint at 7, Snider, et al. v. Tellico Landing, LLC, No. 3:11-ap-03220 (Bankr. E.D. Tenn. Oct. 14, 2011) (No. 1).

²⁰¹ Resident Group Adversary Complaint, *supra* note 200, at 1.

²⁰² Resident Group Adversary Complaint, *supra* note 200, at 4-7.

LTR, used \$ 3.5 million to \$ 4.5 million in social membership deposits to construct the golf course.²⁰³

The Resident Group also requested equitable relief of “impos[ing] an equitable lien and/or constructive trust²⁰⁴ upon [Tellico Landing’s] property [or, in the alternative, at least upon the golf course] for the benefit” of the Resident Group.²⁰⁵ In essence, the Resident Group asked for an interest in Tellico’s property to secure the Resident Group’s claim to the construction of community amenities. Should the amenities not be built, a constructive trust and/or equitable lien would give the Resident Group in effect title to Tellico Landing’s property, which the Resident Group could use to satisfy its claim. Because WindRiver already held an interest in the Rarity Pointe development, the Resident Group’s requested remedy could affect WindRiver’s rights. Accordingly, the Resident Group named WindRiver as a party to the action but did not allege that WindRiver was responsible for any of the claims in the complaint.²⁰⁶ The Resident Group additionally sought class certification.²⁰⁷

The Resident Group’s request for a constructive trust in Tellico Landing’s property was one way to ensure that both Tellico Landing *and* WindRiver accounted for the amenities in their respective long-term strategies. Should the Resident Group succeed in obtaining a constructive trust upon Tellico Landing’s property, this property would not be part of Tellico Landing’s bankruptcy estate, and would be beyond the reach of other creditors, including WindRiver.²⁰⁸ Thus, in practical effect, a successful constructive trust claim here would give the Resident Group members commensurate status as secured creditors.²⁰⁹ The Resident Group may have

²⁰³ Resident Group Adversary Complaint, *supra* note 200, at 8.

²⁰⁴ BLACK’S LAW DICTIONARY (10 ed. 2014), *available at* WestlawNext Black’s Law Dictionary, defines a constructive trust as “[a]n equitable remedy by which a court recognizes that a claimant has a better right to certain property than the person who has legal title to it. This remedy is commonly used when the person holding the property acquired it by fraud, or when property obtained by fraud or theft (as with embezzled money) is exchanged for other property to which the wrongdoer gains title. The court declares a constructive trust in favor of the victim of the wrong, who is given a right to the property rather than a claim for damages.” Similarly, an equitable lien is “[a] right, enforceable only in equity, to have a demand satisfied from a particular fund or specific property, without having possession of the fund or property.” *Id.*

²⁰⁵ Resident Group Adversary Complaint, *supra* note 200, at 7.

²⁰⁶ Resident Group Adversary Complaint, *supra* note 200, at 7.

²⁰⁷ Resident Group Adversary Complaint, *supra* note 200, at 7.

²⁰⁸ Craig Millet, *Beware The Constructive Trust Claim*, LAW360 (Oct. 13, 2010), <http://www.gibsondunn.com/publications/Documents/Millet-BewaretheConstructiveTrustClaim.pdf>.

²⁰⁹ *Id.*

asserted this claim just to force Tellico Landing to address the claim in its reorganization plan. However, it is equally likely that this was a show of force by the Resident Group to grab WindRiver's attention. Constructive trusts are largely creatures of state law.²¹⁰ Should WindRiver foreclose on Rarity Pointe, whether by relief from the stay, pursuant to a confirmed reorganization plan, dismissal of the proceeding, or otherwise, the Resident Group likely could still assert its constructive trust claim against Rarity Pointe under state law. This would cast uncertainty over title to Rarity Pointe, likely lowering the price WindRiver could see at a foreclosure sale (and thus lowering WindRiver's ability to recoup its investment or pursue its own desire to take title to Rarity Pointe). Essentially, in making its constructive trust claim, the Resident Group made amenity construction (and consequently the constructive trust claim's resolution) to be in WindRiver's interest, as well as its own.

6. *Disclosure Objections*

Meanwhile, the parties were also reviewing and evaluating Tellico Landing's Disclosure. Just as Tellico Landing used its Disclosure in part to raise support for its Plan, objections by the parties to the adequacy of the Disclosure went beyond the scope of the Disclosure's information. In reviewing the objections below, notice how the parties' objections often address the merits of the Plan. Despite being couched in terms of the adequacy of the Disclosure's *explanation* of the Plan's practicability, the objections often appear to attack the practicability *of the Plan itself*. Like Tellico Landing's use of its Disclosure, these objections also provide an indirect way to voice reasons to reject Tellico Landing's Plan. Just as the Code prohibits solicitation of acceptance of a plan before a formal ruling on the adequacy of an accompanying disclosure statement, the Code also prohibits solicitation of votes *rejecting* a plan in the same manner.²¹¹

The U.S. Trustee objected to the adequacy of Tellico Landing's Disclosure. Among other objections, the U.S. Trustee asserted that the Disclosure failed to:

- explain the required votes for approval of the Plan;
- include "a more thorough description of all the assets currently owned by" Tellico Landing;
- include adequate details surrounding the proposed debtor-in-possession financing by Heritage, specifically information of Heritage's principals and their experience and relationship, if any, with Tellico Landing's principals;
- include a Chapter 7 liquidation analysis, supported by more than Tellico Landing's assertions as to the ordinary course of business value and liquidation value of Tellico Landing's assets, to inform creditors what they would receive should a liquidation take place;

²¹⁰ See Millet, *supra* note 208.

²¹¹ 11 U.S.C. § 1125(a)(1), (b).

- include information about experience of Tellico Landing’s proposed marketing team to overcome the U.S. Trustee’s suspicion of Tellico Landing’s ability to meet its sales projections;
- explain the risks the Plan posed to WindRiver and Heritage, and what remedies creditors would have should Tellico Landing default on plan terms; and
- adequately address “[t]he status and probable outcome of any on-going litigation involving” Tellico Landing.²¹²

WindRiver also objected to the adequacy of Tellico Landing’s Disclosure.²¹³ Notably, WindRiver stated that Tellico Landing failed to “explain or verify” the Disclosure’s value estimation of Tellico Landing’s property.²¹⁴ WindRiver additionally raised the following objections, among others, that the Disclosure failed to:

- disclose the actual extent to which LTR used Social Membership Fees to construct the golf course;
- address the constructive trust/equitable lien request by Resident Group members;
- provide documentation of a binding commitment of Heritage to provide post-petition financing;
- address the possibility and outcome of Tellico Landing failing to meet its lot sale projections, noting that no lots had been sold in the last three years; and
- address the status of pending litigation against Ross.²¹⁵

Stooksbury additionally objected to Tellico Landing’s Disclosure, mostly on the grounds that, according to Stooksbury, the Disclosure mischaracterized Whelchel and Stooksbury’s participation in Tellico Landing’s business and the success of Ross’s other developments.²¹⁶

²¹² U.S. Trustee Objections to Adequacy of Disclosure Statement at 1-3, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 85).

²¹³ WindRiver Objection to Adequacy of Disclosure Statement at 1, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 87).

²¹⁴ WindRiver Objection to Adequacy of Disclosure Statement, *supra* note 213, at 4.

²¹⁵ WindRiver Objection to Adequacy of Disclosure Statement, *supra* note 213, at 1-4.

²¹⁶ Stooksbury Objection to Adequacy of Disclosure Statement at 1-2, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 86).

Stooksbury additionally contended that the Disclosure “g[ave] a false picture of Rarity Pointe re-sale revenues.”²¹⁷ Stooksbury further objected that the Disclosure failed to:

- address that Ross had withheld Tellico Landing financial information from Whelchel and Stooksbury despite court orders to provide the information;
- address the extent to which Ross and entities under his control owe money to Tellico Landing;
- address the extent of unfinished infrastructure in Rarity Pointe; and
- address the fact that 45 lots in Rarity Pointe had been foreclosed, with several resold at prices as low as 36% of the original purchase price.²¹⁸

E. November

After multiple continuances, the court held a hearing on November 14, 2011, on Tellico Landing’s motion for DIP financing and entered an order four days later denying Tellico Landing’s motion.²¹⁹

1. *Parties Respond to the Resident Group Adversary Proceeding*

As a named defendant, WindRiver responded to the Resident Group’s adversary complaint on November 21, 2011. WindRiver did not contest the merits of Resident Group member claims nor their entitlement to their requested relief; rather, WindRiver merely asserted in its answer that any interest of Resident Group members would be subordinate to WindRiver’s interest in Tellico Landing’s property.²²⁰

A day later, Tellico Landing filed its own answer.²²¹ Consistent with its omnibus objections, Tellico Landing denied that Resident Group members held valid claims against Tellico Landing and were entitled to relief.²²² Notably, Tellico Landing admitted that social

²¹⁷ Stooksbury Objection to Adequacy of Disclosure Statement, *supra* note 216, at 2.

²¹⁸ Stooksbury Objection to Adequacy of Disclosure Statement, *supra* note 216, at 1-2.

²¹⁹ Order Denying Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 125).

²²⁰ Answer at 4-5, Snider, et al. v. Tellico Landing, LLC, No. 3:11-ap-03220 (Bankr. E.D. Tenn. Oct. 14, 2011) (No. 6).

²²¹ Answer, Snider, et al. v. Tellico Landing, LLC, No. 3:11-ap-03220 (Bankr. E.D. Tenn. Oct. 14, 2011) (No. 7).

²²² Answer, *supra* note 221, at 1.

membership “deposits were used to help construct the golf course” but that this was not improper because “[t]here were no restrictions on the use of the funds.”²²³ Tellico Landing also admitted it represented to prospective lot purchasers the social membership deposits would entitle them to use of amenity facilities.²²⁴ Tellico Landing denied, however, that no amenities were provided to purchasers because “all lot owners had the right to access the [offsite] amenities available at Rarity Bay upon their payment of monthly dues.”²²⁵ Note carefully that *Rarity Bay* is a separate development in which Ross was involved.²²⁶

Tellico Landing also asserted a number of affirmative defenses in its answer.²²⁷ Specifically, Tellico Landing asserted that applicable statutes of limitations had run on “[s]ome if not all” of Resident Group members’ claims.²²⁸ Moreover, Tellico Landing stated that “[m]any of the proposed class of plaintiffs acquired their lots with full knowledge that the development had stalled due to economic conditions that have prevailed throughout the country since 2007” and that “[m]any of the proposed class of plaintiffs acquired their lots with no intention of ever using any social membership.”²²⁹ Tellico Landing also asserted that the Resident Group members “have no contractual rights that bind [Tellico Landing] to build the amenities” and, for good measure, that their “complaint fails to state a claim for which relief may be granted.”²³⁰ Tellico Landing additionally denied that Resident Group members were entitled to class certification and that “[t]he relief sought by the plaintiffs will have a chilling effect on sales and possibly triggering a default on its plan and thus a liquidation of the remaining lots at below current market prices.”²³¹

Tellico Landing further stated that it had “proposed a plan that binds LTR to build the amenities.”²³² If a confirmed Chapter 11 plan provides for injunctive or equitable relief in favor

²²³ Answer, *supra* note 221, at 3.

²²⁴ Answer, *supra* note 221, at 2.

²²⁵ Answer, *supra* note 221, at 2.

²²⁶ Dave Flessner, *Broken dreams*, CHATTANOOGA TIMES FREE PRESS (Mar. 6, 2011), <http://www.timesfreepress.com/news/news/story/2011/mar/06/broken-dreams/44135/>.

²²⁷ Answer, *supra* note 221, at 3-4.

²²⁸ Answer, *supra* note 221, at 3.

²²⁹ Answer, *supra* note 221, at 3.

²³⁰ Answer, *supra* note 221, at 4.

²³¹ Answer, *supra* note 221, at 1-2, 3.

²³² Answer, *supra* note 221, at 3.

of a party, then requests by that party for the same relief cannot form the basis of an adversary proceeding.²³³

The Court eventually consolidated almost all of the Social Membership Fee claims into this adversary proceeding²³⁴ and, like the other adversary proceeding, this proceeding too would eventually be dismissed.²³⁵

2. *WindRiver Requests Relief from the Stay*

On November 22, 2011, WindRiver filed its own motion for relief from the automatic stay.²³⁶ In its motion, WindRiver sought permission to enforce its Deed of Trust on the Tellico Landing real property assets, pointing out that Tellico Landing filed for Chapter 11 bankruptcy just “four days prior to the date scheduled for WindRiver’s foreclosure sale of the debtor’s real property.”²³⁷ By way of background, WindRiver had previously acquired the promissory notes from Tellico Landing’s original financier SunTrust Bank in June 2011.²³⁸ The Deed of Trust held by WindRiver encumbered Tellico Landing’s real property, which, at the time, was valued at \$8.7 million.²³⁹ At the time of WindRiver’s motion for relief from the stay, Tellico Landing owed WindRiver approximately \$8 million and, critically, also owed Loudon County approximately \$1 million for property taxes that stood as a superior lien on the property.²⁴⁰ WindRiver concluded that these facts meant that the Tellico Landing real estate had no equity

²³³ FED. R. BANKR. P. 7001(7).

²³⁴ Agreed Order, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 126).

²³⁵ Stipulation of Dismissal, Snider, et al. v. Tellico Landing, LLC, No. 3:11-ap-03220 (Bankr. E.D. Tenn. Oct. 14, 2011) (No. 23).

²³⁶ Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 129).

²³⁷ Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *supra* note 236, at 1.

²³⁸ Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *supra* note 236, at 2.

²³⁹ Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *supra* note 236, at 2.

²⁴⁰ Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *supra* note 236, at 3.

and that the property was unnecessary for an effective reorganization of the debtor's estate.²⁴¹ In bankruptcy parlance, this meant that WindRiver held a secured interest in the real property that was not adequately protected, entitling WindRiver to seek relief from the stay imposed.²⁴²

F. December

Tellico Landing responded—with a lower-case “r”—to WindRiver's motion for relief from stay. On December 11, 2011, Tellico Landing fired back at WindRiver, opposing its motion to lift the automatic stay.²⁴³ However, its response was a mere two-sentence token gesture, stating only that “no cause [is] shown” to lift the stay, that the property is indeed necessary for reorganization, and that Tellico Landing has “substantial equity in its property” that secures WindRiver's debt.²⁴⁴

1. *Tellico Landing Files New Plan And Renews its Motion for DIP Financing*

Before the court ruled on the adequacy of Tellico Landing's Disclosure, Tellico Landing filed a Second Plan of Reorganization and a Second Disclosure Statement on December 13, 2011.²⁴⁵ Because Tellico Landing later amended its Second Plan of Reorganization and Second Disclosure Statement before any party filed objections, these filings do not warrant further discussion.

Also on December 13, 2011, Tellico Landing filed a renewed motion for DIP financing, again asking for the authority to obtain credit secured by a senior lien on real property that was already subject to a lien.²⁴⁶ Tellico Landing, as the DIP, again asked the court to permit financing in the amount of \$2.75 million from Heritage Solutions.²⁴⁷ In return for the financing, Heritage Solutions would receive a superpriority lien on Rarity Pointe real estate, the property on

²⁴¹ Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *supra* note 236, at 3.

²⁴² Motion of WindRiver Investments, LLC for Relief from the Automatic Stay, *supra* note 236, at 3. *See* 11 U.S.C.A. § 362(d)(1)-(2).

²⁴³ *See generally* Response to Motion Lift [sic] the Automatic Stay, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 136).

²⁴⁴ Response to Motion Lift [sic] the Automatic Stay, *supra* note 243, at 1.

²⁴⁵ Second Plan of Reorganization, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 132); Second Plan of Reorganization, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 131).

²⁴⁶ *See* Renewed Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 139) [hereinafter Renewed Motion for DIP Financing].

²⁴⁷ Renewed Motion for DIP Financing, *supra* note 246, at 2.

which WindRiver held a secured first priority lien.²⁴⁸ Tellico argued that WindRiver’s interest was adequately protected by the approximately \$24 million value of the Rarity Pointe real estate, a slightly lower figure than the market value quoted in Tellico Landing’s first motion for DIP financing.²⁴⁹ As it did in its original financing motion, Tellico Landing promised that it was reserving \$350,000 of the new financing it would receive from Heritage Solutions to pay interest that it owed to WindRiver.²⁵⁰

G. January

On January 18, 2012, WindRiver filed a memorandum in support of its motion for relief from stay, demonstrating its causes for the court to consider.²⁵¹ WindRiver argued in its memorandum that relief from the stay would be appropriate because its financial relationship with Tellico Landing precisely matches the reasons in § 362(d) for the cause that permits relief from the stay, to wit: (1) for cause, including the lack of adequate protection, and (2) lack of equity in the property and the property’s status as unnecessary to an effective reorganization.²⁵² WindRiver argued that, although “adequate protection” is not defined in the Code, equity cushions or periodic cash payments can provide adequate protection when debtor property values are decreasing—but Tellico Landing had no income with which to protect WindRiver.²⁵³ Moreover, Tellico’s property was already subject to liens that exceeded the value of the property.²⁵⁴ But WindRiver had an even better argument in support of its motion: under § 362(d)(2), the *debtor*—not WindRiver—has the burden of proving that its property is necessary for an effective reorganization.²⁵⁵ In short, WindRiver argued that Tellico Landing’s only proposed reorganization plan was “entirely contingent” on the approval of DIP financing, which

²⁴⁸ Renewed Motion for DIP Financing, *supra* note 246, at 2.

²⁴⁹ Renewed Motion for DIP Financing, *supra* note 246, at 2-3.

²⁵⁰ Renewed Motion for DIP Financing, *supra* note 246, at 3.

²⁵¹ *See generally* Memorandum in Support of WindRiver Investments, LLC’s Motion for Relief from the Automatic Stay, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 166).

²⁵² Memorandum in Support of WindRiver Investments, LLC’s Motion for Relief from the Automatic Stay, *supra* note 251, at 3 (quoting 11 U.S.C. § 362(d)(1)-(2)).

²⁵³ Memorandum in Support of WindRiver Investments, LLC’s Motion for Relief from the Automatic Stay, *supra* note 251, at 4.

²⁵⁴ Memorandum in Support of WindRiver Investments, LLC’s Motion for Relief from the Automatic Stay, *supra* note 251, at 4.

²⁵⁵ Memorandum in Support of WindRiver Investments, LLC’s Motion for Relief from the Automatic Stay, *supra* note 251, at 4 (citing *In re* Sharon, 200 B.R. 181, 194 (Bankr.S.D. Ohio 1996)).

had already been denied.²⁵⁶ On top of that, WindRiver argued that the series of judgments against Ross and related entities would also adversely impact any viable reorganization plan.²⁵⁷ Consequently, in WindRiver's view, Tellico Landing could not satisfy its burden of proof under § 362(d)(2) to show that its property was necessary to a viable reorganization plan that could be put together in a reasonable time.²⁵⁸

1. An Important Hearing

On January 18, 2012, the court held a hearing on the multiple pending motions in the case. After the hearing, the court summarily denied WindRiver's motion for relief from stay on January 25, 2012.²⁵⁹

H. February

WindRiver promptly filed its Notice of Appeal²⁶⁰ of the court's denial of its motion for relief from stay on February 2, 2012.²⁶¹ One day later on February 3, 2012, the court breathed new life into Tellico Landing's plans by allowing its renewed motion to receive DIP financing.²⁶² In its order, the court stated that it based its decision on the testimony of Ross, Jim Macri, Dr. William Legg, and stipulated testimonies of James Fitzgerald and Bailey Sharp.²⁶³

²⁵⁶ Memorandum in Support of WindRiver Investments, LLC's Motion for Relief from the Automatic Stay, *supra* note 251, at 4-5.

²⁵⁷ Memorandum in Support of WindRiver Investments, LLC's Motion for Relief from the Automatic Stay, *supra* note 251, at 5.

²⁵⁸ Memorandum in Support of WindRiver Investments, LLC's Motion for Relief from the Automatic Stay, *supra* note 251, at 5-6. See *In re Mary Harpley Builder, Inc.*, 44 B.R. 151, 154 (Bankr. N.D. Ohio 1984).

²⁵⁹ Order Denying WindRiver's Motion for Relief from the Automatic Stay, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 180).

²⁶⁰ Appeals from a federal bankruptcy court are taken to the United States District Court in the district where the bankruptcy court sits. 28 U.S.C. § 158(a). Accordingly, WindRiver filed its appeal in the United States District Court for the Eastern District of Tennessee. Record on Appeal, *WindRiver Investments, LLC v. Tellico Landing, LLC*, No. 3:12-cv-00162 (E.D. Tenn. Apr. 5, 2012) (No. 1).

²⁶¹ Notice of Appeal, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 191).

²⁶² Order Approving Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 197) [Hereinafter Order Approving Financing].

²⁶³ Order Approving Financing, *supra* note 262, at 1.

The court concluded that, as of the January 20 hearing, Tellico Landing's real property had debts of over \$9 million with a "present net value" of \$15 million.²⁶⁴ The court further found that Tellico Landing was unable to obtain credit in any other fashion than the superpriority lien and that WindRiver had adequate protection of its interest in Tellico Landing's debtor estate.²⁶⁵

Thus, after a nearly five-month battle, Tellico Landing successfully received DIP financing from Heritage Solutions, including \$100,000 to pay for new advertising and approximately \$1 million to cover property taxes owed.²⁶⁶ On February 12, 2012, WindRiver filed its Notice of Appeal on the DIP financing issue.²⁶⁷ While WindRiver and Tellico Landing would brief their respective positions in WindRiver's appeals of the orders denying WindRiver a relief from stay and granting Tellico Landing's motion for DIP financing, both appeals would eventually be stayed and dismissed before the district court ruled on either.²⁶⁸

I. March

1. *Tellico Landing Amends its Second Plan and Second Disclosure Statement*

Tellico Landing subsequently filed an Amended Second Disclosure Statement ("Amended Disclosure") and an Amended Second Plan of Reorganization ("Amended Plan") the following March 5 and 6, respectively.²⁶⁹ Two important events occurred by the end of March 6. First, LTR's assets had been executed to satisfy a judgment held by Athena of SC, LLC ("Athena").²⁷⁰ Athena's principal was to create a new entity "NEWCO" to step into the shoes of

²⁶⁴ Order Approving Financing, *supra* note 262, at 1.

²⁶⁵ Order Approving Financing, *supra* note 262, at 1-2.

²⁶⁶ Order Approving Financing, *supra* note 262, at 2.

²⁶⁷ Notice of Appeal, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 205).

²⁶⁸ Agreed Order, *WindRiver Investments, LLC v. Tellico Landing, LLC*, No. 3:12-cv-00162 (E.D. Tenn. Apr. 5, 2012) (No. 10); Stipulation of Dismissal with Prejudice, *WindRiver Investments, LLC v. Tellico Landing, LLC* No. 3:12-cv-00162 (E.D. Tenn. Apr. 5, 2012) (No. 11); Agreed Order, *WindRiver Investments, LLC v. Tellico Landing, LLC*, No. 3:12-cv-00163 (E.D. Tenn. Apr. 5, 2012) (No. 11); Stipulation of Dismissal with Prejudice, *WindRiver Investments, LLC v. Tellico Landing, LLC*, No. 3:12-cv-00163 (E.D. Tenn. Apr. 5, 2012) (No. 12).

²⁶⁹ Amended Second Disclosure Statement, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 218); Amended Second Plan of Reorganization, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 220).

²⁷⁰ Amended Second Disclosure Statement, *supra* note 269, at 13.

LTR in Tellico Landing's affairs.²⁷¹ Thus, the Amended Disclosure provided that NEWCO would perform the obligations and acquire the rights of LTR.²⁷² Second, Stooksbury obtained a default judgment against Ross on March 6 for \$18,346,915.00.²⁷³ Tellico Landing accordingly supplemented its Amended Disclosure to reflect Stooksbury's judgment.²⁷⁴

Other than accounting for these two events, the Amended Plan and Amended Disclosure largely echoed the original Plan and Disclosure, with a few other variations, most notably that the Amended Disclosure:

- Proceeded upon the court's prior approval of Tellico Landing's proposed terms of debtor-in-possession financing by Heritage;
- Noted the court found the total "net present value of all of Rarity Pointe is \$15,000,000," but that Ross still believed the development was worth \$22,000,000 "in the ordinary course of business;"
- Stated that none of multiple recent state and federal court judgments against Ross would affect Tellico Landing's future affairs; and
- Challenged Stooksbury's previous objections to the original Plan and Disclosure as made in bad faith to derail the reorganization process. Tellico Landing did not elaborate, as it "did not believe it necessary to address the Stooksbury objections any further."²⁷⁵

2. *The Objections*

WindRiver, the U.S. Trustee, the Resident Group, and Stooksbury all filed their objections to the Amended Disclosure on March 12, 2012.

WindRiver, as in its first objection, objected that the Amended Disclosure failed to adequately discuss the true extent to which LTR used Social Membership Fees to construct the golf course, the relief requested by Resident Group members, and the nature of outside pending

²⁷¹ Amended Second Disclosure Statement, *supra* note 269, at 13.

²⁷² Amended Second Disclosure Statement, *supra* note 269, at 13.

²⁷³ Order, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498-TAV-HBG (E.D. Tenn. Nov. 2009) (No. 250); Judgment in a Civil Case, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498-TAV-HBG (E.D. Tenn. Nov. 18, 2009) (No. 390).

²⁷⁴ Supplement to Amended Second Plan of Reorganization, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 221); Supplement to Amended Second Disclosure Statement, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 222).

²⁷⁵ Amended Second Disclosure Statement, *supra* note 269, at 19-20, 21.

litigation against Ross.²⁷⁶ Additionally, WindRiver contended that the Amended Disclosure, among other shortcomings, failed to adequately explain:

- the nature and effect of Athena’s judgment against LTR;
- how LTR had authority to transfer rights such as social membership deposits to NEWCO;
- how WindRiver’s collateral would be adequately protected during the Amended Plan’s implementation, especially in light of WindRiver’s interest being subordinated to Heritage Solutions’ debtor-in-possession financing lien;
- what events would cause a default under the Amended Plan and what remedies would exist;
- whether the proposed debtor-in-possession financing “has obtained the requisite approval of [Tellico Landing’s] members”;
- “address the legal or factual basis for the proposed replacement of LTR as a member of [Tellico Landing] by NEWCO”; and
- discrepancies between the Amended Disclosure’s estimated sale expenses and expert witness estimations of sale expenses.²⁷⁷

The U.S. Trustee objected to the Amended Disclosure for lack of specification on the marketing strategy for Rarity Pointe lot sales and how marketing expenses would be paid should lot sales be insufficient to cover costs.²⁷⁸ The U.S. Trustee also objected to:

- the lack of information of exact amounts owed to certain creditors, and the lack of an “estimate[d] percentage return anticipated for each Class;”
- the dearth of information regarding the extent to which LTR’s assets were executed upon by Athena.²⁷⁹

²⁷⁶ WindRiver Investments, LLC’s Objections to the Adequacy of the Debtor’s Amended Second Disclosure Statement at 1-2, 5, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 226).

²⁷⁷ WindRiver Investments, LLC’s Objections to the Adequacy of the Debtor’s Amended Second Disclosure Statement, *supra* note 276, at 2-7.

²⁷⁸ Restated Objections of U.S. Trustee to Debtor’s Amended Second Disclosure Statement at 1, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 228).

²⁷⁹ Restated Objections of U.S. Trustee to Debtor’s Amended Second Disclosure Statement, *supra* note 278, at 2, 3.

The U.S. Trustee also wanted information on NEWCO's equity holders and golf course management experience.²⁸⁰ Lastly, the U.S. Trustee "[found] it very disturbing that there were no disclosures regarding litigation with Athena in prior drafts of the Disclosure Statement. To the extent that the debtor is aware of *any* on-going proceedings that may have an effect on Tellico Landing or its assets or distribution under the Plan, this should be disclosed."²⁸¹

F. Scott Milligan filed objections on behalf of the Resident Group members the same day as the U.S. Trustee. In it, the Resident Group asserted that the Amended Disclosure failed to adequately detail the Resident Group members' claims, the pending adversary proceeding, and how their requested constructive trust and/or equitable lien would impact Tellico Landing's reorganization.²⁸² The Resident Group members additionally objected to the Amended Disclosure's lack of detail surrounding amenities to be built, such as cost projections and completion dates.²⁸³ Additionally, the Resident Group wanted more information concerning NEWCO's obligations and the relationship of NEWCO's principals with Ross.²⁸⁴

Armed with a recent federal court judgment against Ross, Stooksbury objected to the Amended Disclosure primarily on the grounds that it failed to address the judicial findings of fact in the outside federal proceeding that Ross, through himself and various entities, "committed numerous wrongful acts, including mail fraud, wire fraud, breaches of fiduciary duty, and common law fraud while operating" Rarity Pointe.²⁸⁵ Specifically, Stooksbury asserted that

it was established: that LTR Properties, Inc., Michael L. Ross, and numerous other related business entities and persons operated an illegal real estate enterprise and conspiracy in violation of federal and state law. This conspiracy was used to siphon off millions of dollars from the various 'Rarity' developments, including Rarity Pointe, in order to use the money for other

²⁸⁰ Restated Objections of U.S. Trustee to Debtor's Amended Second Disclosure Statement, *supra* note 278, at 3.

²⁸¹ Restated Objections of U.S. Trustee to Debtor's Amended Second Disclosure Statement, *supra* note 278, at 3 (emphasis in original).

²⁸² Objection to Amended Second Disclosure Statement by Plaintiff Property Owners at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 229).

²⁸³ Objection to Amended Second Disclosure Statement by Plaintiff Property Owners, *supra* note 282, at 1.

²⁸⁴ Objection to Amended Second Disclosure Statement by Plaintiff Property Owners, *supra* note 282, at 2.

²⁸⁵ Objections to Disclosure Statement at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 230).

purposes and personal gain[.]²⁸⁶

Consequently, according to Stooksbury, the Amended Disclosure’s depiction of Tellico Landing’s formation and operation is contradicted by judicially established facts and “[was] a blatant effort to re-litigate [those] facts already established in” federal court, “violating fundamental principles of law, including collateral estoppel and *res judicata*.”²⁸⁷

Like the U.S. Trustee and the Resident Group, Stooksbury objected to the paucity of information concerning Athena and NEWCO, but Stooksbury went one step further.²⁸⁸ He asserted that Athena’s execution of LTR’s assets was “a fraudulent conveyance and is most likely a continuation of LTR Properties, Inc.’s and Mike Ross’s fraudulent activities.”²⁸⁹ Stooksbury additionally objected to the Amended Disclosure’s lack of explanation on why Tellico Landing should transfer the golf course to NEWCO as LTR’s successor, after paying WindRiver in full, when LTR failed to satisfy contractual conditions to receiving the golf course in addition to “engag[ing] in illegal and fraudulent conduct while constructing the golf course.”²⁹⁰ As a precursor of things to come, Stooksbury additionally faulted the Amended Disclosure for failing to acknowledge that Ross lacked the authority to file bankruptcy on behalf of Tellico Landing in the first place.²⁹¹

The Court never ruled on the adequacy of Tellico’s Amended Disclosure. Instead, that issue would take a back seat to subsequent—and dispositive—motions to dismiss the case.

3. *The Motions to Dismiss*

Barely over a week after filing his objections to Tellico Landing’s Amended Disclosure, Stooksbury filed three separate motions on March 20, 2012 seeking to: (1) appoint a trustee; (2) remove LTR as Tellico Landing’s managing member; and (3) dismiss the case and/or prohibit additional debtor-in-possession financing.²⁹² Each of these motions represented a different way

²⁸⁶ Objections to Disclosure Statement, *supra* note 285, at 1.

²⁸⁷ Objections to Disclosure Statement, *supra* note 285, at 2-3, 4.

²⁸⁸ Objections to Disclosure Statement, *supra* note 285, at 3.

²⁸⁹ Objections to Disclosure Statement, *supra* note 285, at 3.

²⁹⁰ Objections to Disclosure Statement, *supra* note 285, at 3.

²⁹¹ Objections to Disclosure Statement, *supra* note 285, at 4.

²⁹² Motion to Appoint Chapter 11 Trustee, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 247); Motion to Remove Debtor’s Managing Member, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 249); Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 248).

for Stooksbury to get what he wanted: to dismiss the bankruptcy case (and lift the stay) or at least limit the obstacles between him and recovering his judgment against LTR and Ross.

In all of these motions, Stooksbury repeated the “facts established as a matter of law” in Stooksbury’s default judgment against Ross that Ross and LTR had committed acts of mail fraud, wire fraud, money laundering, and racketeering while operating Rarity Pointe.²⁹³ In his motion to appoint a trustee, Stooksbury quoted the Code’s language permitting appointment of a trustee “for cause, including fraud, dishonesty, incompetence or gross mismanagement of the affairs of the debtor.”²⁹⁴ Stooksbury then shortly stated that the facts established in his judgment gave the bankruptcy court “cause” to appoint a trustee.²⁹⁵

Stooksbury additionally attacked the validity of the entire bankruptcy proceeding, asserting that LTR and/or Ross never had authority file a bankruptcy petition on Tellico Landing’s behalf in the first place.²⁹⁶ Remember, a person filing bankruptcy on behalf of a business entity must have the authority to do so, and state law determines whether authority exists.²⁹⁷ Note also that LTR held a 50% interest in Tellico Landing, with Whelchel and Stooksbury each holding a 25% interest.²⁹⁸ Stooksbury pointed to Tellico Landing’s Operating Agreement provisions stating:

8.6 Restrictions on Authority of the Managing Member. Notwithstanding the express grant of authority to the Managing Member in Section 8.1, above, the following matters shall require approval by a vote of not less than 75% of the Membership Interests, unless a different voting requirement is provided for elsewhere in this Agreement:

(a) Any sale or other disposition of the Company or its assets (other than a sale of assets in the normal course of business), whether by way of sale of membership interests, sale of all or substantially all of the assets of the Company, merger or otherwise;

²⁹³ Motion to Appoint Chapter 11 Trustee, *supra* note 292, at 2; Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 292, at 2; Motion to Remove Debtor’s Managing Member, *supra* note 292, at 2.

²⁹⁴ Motion to Appoint Chapter 11 Trustee, *supra* note 292, at 3. ²⁹⁵ Motion to Appoint Chapter 11 Trustee, *supra* note 292, at 3.

²⁹⁶ Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 292, at 4.

²⁹⁷ Price, *supra* note 11, at 106.

²⁹⁸ Voluntary Petition, *supra* note 62, at 10. *See also* List of Equity Security Holders, *supra* note 63, at 1.

(b) The dissolution of the Company;

(c) Any refinancing of the existing debt of the Company, or any plan of financing that would require the grant of a security interest in the assets of the Company, whether in the form of a mortgage or otherwise;

(d) Any amendment of this Agreement or of the Articles of Organization of the Company;

(e) The admission of a new Member;

(f) The employment, whether as an agent, independent contractor, employee or otherwise, of any any [sic] individual who is a family member or relative of a Member, or that is an entity that is a related party or affiliate of a Member.²⁹⁹

From these provisions, Stooksbury asserted that LTR could not, without the approval of Whelchel or Stooksbury, file a bankruptcy petition on Tellico Landing's behalf.³⁰⁰ Alternatively, Stooksbury argued that even if LTR *did* have authority to file, the fact that Tellico Landing's Amended Disclosure stated that LTR was no longer a member of Tellico Landing required that both Whelchel and Stooksbury would have to consent to any debtor-in-possession financing.³⁰¹ Thus, Stooksbury asked the court to dismiss the proceeding or enter an order requiring Whelchel and Stooksbury's approval "before [Tellico Landing] enters into a DIP financing agreement."³⁰²

The first requested relief would lift the stay and allow Stooksbury to enforce his judgment; the second would continue the stay, but at least prevent a debtor-in-possession lender from further encumbering Tellico Landing's assets (which would make Stooksbury's recovery of his own judgment more difficult).

Stooksbury also pointed to Tellico Landing's Operating Agreement to support his motion to remove LTR as Tellico Landing's managing member and Ross as chief manager.³⁰³ Specifically, Stooksbury pointed to a provision conditioning LTR's managing member status on Ross's ownership and control of LTR.³⁰⁴ The Operating Agreement further provided that "for so

²⁹⁹ Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 292, at 3-4 (alterations in original).

³⁰⁰ Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 292, at 4.

³⁰¹ Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 292, at 4.

³⁰² Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 292, at 4-5.

³⁰³ Motion to Remove Debtor's Managing Member, *supra* note 292, at 3-5.

³⁰⁴ Motion to Remove Debtor's Managing Member, *supra* note 292, at 5.

long as LTR is the Managing Member . . . it shall have the right to appoint the Chief Manager.”³⁰⁵ Although Stooksbury reiterated his suspicion that Athena’s execution of LTR’s assets was “a fraudulent conveyance and a continuation of LTR,” Stooksbury pointed to Ross’s signature on the Amended Disclosure as an admission that Ross no longer owned and controlled LTR.³⁰⁶ Thus, Stooksbury asserted that LTR no longer complied with the Operating Agreement, preventing LTR from continuing as Tellico Landing’s managing member.³⁰⁷ Stooksbury then requested that he and Whelchel elect Tellico Landing’s new managing member in accordance with the Operating Agreement.³⁰⁸ Should Stooksbury succeed with this request, he and Whelchel could elect Tellico Landing’s new managing member, presumably one who would dismiss the bankruptcy on behalf of Tellico Landing.

WindRiver filed its own motion to dismiss on March 26, 2012, also asserting that LTR had no authority to file bankruptcy on Tellico Landing’s behalf.³⁰⁹ In its motion, WindRiver noted that bankruptcy courts recognize that filing a bankruptcy on behalf of business entity “requir[es] specific authorization.”³¹⁰ WindRiver then stated that Tellico Landing’s Operating Agreement gave LTR no express authority to file a bankruptcy petition on Tellico Landing’s behalf.³¹¹ Furthermore, argued WindRiver, Tennessee law requires the consent of all of a limited liability company’s members to do any “act which would make it impossible to carry on the ordinary business of the LLC,” which, in this case, included filing bankruptcy.³¹²

Tellico Landing responded to Stooksbury’s motion to dismiss on March 30, 2012.³¹³

³⁰⁵ Motion to Remove Debtor’s Managing Member, *supra* note 292, at 5.

³⁰⁶ Motion to Remove Debtor’s Managing Member, *supra* note 292, at 3.

³⁰⁷ Motion to Remove Debtor’s Managing Member, *supra* note 292, at 5.

³⁰⁸ Motion to Remove Debtor’s Managing Member, *supra* note 292, at 5.

³⁰⁹ WindRiver Investments, LLC’s Motion to Dismiss Bankruptcy and Memorandum in Support of Motion to Dismiss Bankruptcy at 6, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 253).

³¹⁰ WindRiver Investments, LLC’s Motion to Dismiss Bankruptcy and Memorandum in Support of Motion to Dismiss Bankruptcy, *supra* note 309, at 3.

³¹¹ WindRiver Investments, LLC’s Motion to Dismiss Bankruptcy and Memorandum in Support of Motion to Dismiss Bankruptcy, *supra* note 309, at 4.

³¹² WindRiver Investments, LLC’s Motion to Dismiss Bankruptcy and Memorandum in Support of Motion to Dismiss Bankruptcy, *supra* note 309, at 5.

³¹³ Debtor’s Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 257).

Predictably, it asserted that LTR did, in fact, have authority to file Tellico Landing's bankruptcy petition.³¹⁴ Tellico Landing relied on the Operating Agreement's provision "expressly delegat[ing] to the Managing Member the authority to conduct and manage the business and affairs of [Tellico Landing] and authorize it to take all actions necessary, advisable or convenient to the development of [Rarity Pointe] and the fulfillment of the business interests of [Tellico Landing]."³¹⁵ Furthermore, Tellico Landing argued that nowhere did the Operating Agreement's limitations on the managing member's authority explicitly preclude the managing member from filing a bankruptcy petition.³¹⁶ Tellico also noted that Tellico Landing's other members did not participate in Tellico Landing's affairs during the 18 months preceding Tellico Landing's bankruptcy.³¹⁷ Reaching, Tellico Landing argued in the alternative that Stooksbury's motion to dismiss should be barred by the equitable doctrine of laches because Stooksbury "never voiced any opposition or objection to [Tellico Landing] to the filing until he filed his Motion to Dismiss."³¹⁸

Regarding Stooksbury's request to limit additional debtor-in-possession financing, Tellico Landing asserted that Stooksbury's former silence to Tellico Landing's motion for such financing constituted Stooksbury's acceptance, or alternatively Stooksbury's ratification, of such action.³¹⁹ Tellico Landing additionally stated that Stooksbury's opposition to debtor-in-possession financing should also be barred by the doctrine of laches.³²⁰

Responding to Stooksbury's motion to appoint a trustee, Tellico Landing denied that facts established in Stooksbury's default judgment failed to demonstrate cause and that Stooksbury's motion be denied by the doctrine of laches.³²¹ Tellico Landing did state, however,

³¹⁴ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 1.

³¹⁵ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 2.

³¹⁶ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 4-5.

³¹⁷ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 5.

³¹⁸ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 6.

³¹⁹ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 7-9.

³²⁰ Debtor's Response to Motion to Dismiss Bankruptcy and/or Prohibit Additional Financing, *supra* note 313, at 10.

³²¹ Debtor's Response to Motion to Appoint Chapter 11 Trustee at 2, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 259).

that it would not object if the court appointed a trustee to “serve the parties’ and estate’s interests.”³²²

Tellico Landing responded to Stooksbury’s motion to remove LTR by stating that: (1) no sale or transfer of LTR’s “Membership Interests in violation of the Operating Agreement” occurred; (2) that, rather, LTR pledged its membership interests in conformance with the Operating Agreement; (3) that LTR’s membership interests have not been foreclosed upon; and (4) to the extent LTR did breach the Operating Agreement by pledging its membership interests, LTR should be given the opportunity to cure the breach.³²³

J. April

Stooksbury replied on April 9, 2012, to Tellico Landing’s response to Stooksbury’s motion to dismiss, arguing that the record made clear that LTR did not have authority and sought no consent of Whelchel or Stooksbury to file the bankruptcy petition.³²⁴ Stooksbury further stated that all of his motions and objections have been timely filed and that Tellico Landing’s reliance on equitable principles should preclude Tellico Landing from continuing the bankruptcy.³²⁵

Meanwhile, by agreement of the parties, the court, on April 26, 2012, continued until May 14, 2012, the hearing “on the adequacy of [Tellico Landing’s Amended Disclosure] and the objections thereto, the motion to appoint a Trustee, and the motion to determine if the case is a single asset real estate case.”³²⁶ By this point, nine months had elapsed since the start of the proceeding.

K. May

On May 8, 2012, Tellico Landing filed its response to WindRiver’s motion to dismiss, largely echoing the assertions Tellico Landing made in response to Stooksbury’s motion to dismiss.³²⁷ Notably, Tellico Landing asserted that its counsel had sought the consent of

³²² Debtor’s Response to Motion to Appoint Chapter 11 Trustee, *supra* note 321, at 3.

³²³ Debtor’s Response to Motion to Remove Debtor’s Managing Member at 3-5, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 258).

³²⁴ Robert T. Stooksbury, Jr.’s Reply in Support of his Pending Motions at 1-2, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 263).

³²⁵ Robert T. Stooksbury, Jr.’s Reply in Support of his Pending Motions, *supra* note 324, at 2-6.

³²⁶ Agreed Order at 1, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 289).

³²⁷ Debtor’s Response to Motion to Dismiss Bankruptcy at 1-9, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 292).

Whelchel prior to filing Tellico Landing's bankruptcy, but Whelchel did not want to be a part of the proceeding.³²⁸

On May 10, 2012, WindRiver also filed a motion in reply to Tellico Landing, rebutting among other things Tellico Landing's argument that Stooksbury and Whelchel ratified the filing of Tellico Landing's petition.³²⁹

Tellico Landing continued to project confidence—regardless of whether others believed it—of its ability to reorganize. On May 10, 2012, just four days before the hearing, Tellico Landing filed a motion asserting a justification for the instant proceeding because “Tellico [Landing] filing its Petition [gave Tellico Landing] a lifeline, allowing [Tellico Landing] to remain viable while it seeks confirmation of a plan that will enable [Tellico Landing] to continue operating and looking at ways in which it can successfully complete [Rarity Pointe].”³³⁰

But by May, Heritage Solutions, Tellico Landing's would-be DIP lender, had backed out of the deal that was approved by the court because of “the passage of time and the complexities that have arisen in this case.”³³¹ Not wanting to admit defeat, Tellico Landing filed another motion for DIP financing, stating that it had received a \$4.1 million commitment from Athena of S.C., LLC to jump-start the building of amenities and aggressively advertise the Rarity Pointe real estate.³³² Tellico Landing maintained that WindRiver's principal interest in the estate, which had risen to \$8 million, was still adequately protected because Rarity Pointe was valued at (the plunging price of) \$15 million.³³³ As you will see, Tellico Landing would soon run out of time to have this motion considered.

1. *The Court's Order*

³²⁸ Debtor's Response to Motion to Dismiss Bankruptcy, *supra* note 327, at 6.

³²⁹ Reply of WindRiver Investments at 5, LLC to Debtor's Response to Motion to Dismiss Bankruptcy, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 298).

³³⁰ Debtor's Reply to Stooksbury's Reply in Support of his Pending Motions at 6-7, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 297).

³³¹ Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien at 2, *In re* Tellico Landing, LLC, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 306).

³³² Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien, *supra* note 331, at 2.

³³³ Motion for Authority to Obtain Credit Secured by a Senior Lien on Property of the Estate that is Subject to a Lien, *supra* note 331. Recall that the two previous motions for DIP financing valued the Rarity Pointe real estate at \$30 and 24 million, respectively. *See* Amended Motion for DIP Financing, *supra* note 117; Renewed Motion for DIP Financing, *supra* note 246.

After holding a hearing on the above motions on Monday, May 14, 2012, the court continued the hearing to Friday, May 18, 2012, at which time the court rendered its opinion.³³⁴

In short, the court found that LTR had no authority to file the bankruptcy petition (including eliminating such authority that Ross individually may have derived from LTR), that Whelchel and Stooksbury did not ratify the petition's filing, and that the doctrine of laches did not bar the challenges to LTR's authority.³³⁵ The court relied specifically on the Operating Agreement's restrictions on the managing member's authority with a 75% membership interest approval as including a restriction on filing for bankruptcy protection.³³⁶

The court noted that its ruling was consistent with other cases holding that operating agreement language granting general authority to a business entity's manager do not typically include authority to file for bankruptcy unless explicitly stated.³³⁷ The court additionally questioned WindRiver's standing to challenge Tellico Landing's filing, but found resolving the issue unnecessary because Stooksbury had such standing.³³⁸ Thus, in accordance with its holdings, the court entered an order dismissing the bankruptcy proceeding.³³⁹

After the order, the parties began wrapping up the proceeding. The adversary proceedings were dismissed,³⁴⁰ and WindRiver dismissed the pending appeals of the bankruptcy court's previous orders to the district court.³⁴¹ The bankruptcy proceeding was finally over.

IV. The Epilogue

With the case dismissed (and the stay extinguished), WindRiver proceeded with foreclosure of the Rarity Pointe development on June 17, 2012.³⁴² WindRiver was itself the

³³⁴ Transcript of Court's Opinion at 4, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 341).

³³⁵ See generally Transcript of Court's Opinion, *supra* note 334.

³³⁶ Transcript of Court's Opinion, *supra* note 334, at 12-13.

³³⁷ Transcript of Court's Opinion, *supra* note 334, at 13-15.

³³⁸ Transcript of Court's Opinion, *supra* note 334, at 18-19.

³³⁹ Order, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 331).

³⁴⁰ Stipulation of Voluntary Dismissal, *supra* note 133; Stipulation of Dismissal, *supra* note 235.

³⁴¹ Stipulation of Dismissal with Prejudice, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 334); Stipulation of Dismissal with Prejudice, *In re Tellico Landing, LLC*, No. 3:11-bk-33018 (Bankr. E.D. Tenn. 2011) (No. 335).

³⁴² Josh Flory, *Rarity Point properties sold at foreclosure*, PROPERTY SCOPE (Mar. 29, 2015 9:32 AM), http://propertyscope.knoxnews.com/2012/06/21/rarity_pointe_properties_sold/.

winning bidder, posting credit bids for the development properties.³⁴³ WindRiver’s attorney stated that WindRiver planned to “come up with a long-term plan for continued development of the property, [including constructing amenities] and undertaking a program for the sale of lots and encourage homeowners that already have purchased property to go ahead and build homes in the development.”³⁴⁴ Rarity Pointe Community Association board member Steve Maynard expressed optimism, stating that, “the people of the community are looking forward to this new beginning.”

Shortly thereafter, WindRiver changed Rarity Pointe’s name to “WindRiver: A Golf and Lakefront Community,” seeking to clarify that the development’s “new owners had no business relationship with the Rarity brand.”³⁴⁵ WindRiver eventually constructed community amenities including a fitness center, park, and tennis courts.³⁴⁶ The authors note that, upon their 2014 visit to the new WindRiver community, the amenities—and particularly, the new clubhouse—appeared well-built, well-kept, and looked to be moving forward nicely.

Meanwhile, the federal judge in Stooksbury’s first lawsuit against Ross ordered Ross’s properties, including certain assets of the Rarity Bay development, into receivership.³⁴⁷ Thereafter, Stooksbury initiated a second lawsuit against Ross and others, accusing them of engaging in a series of fraudulent transactions to defraud Stooksbury and other creditors out of their ability to collect their claims and judgments against Ross.³⁴⁸ The court in the original lawsuit ordered on December 30, 2014, that the receiver conduct a sale of certain Rarity Bay assets, while allowing Stooksbury, subject to certain contingencies, to post a bid at the sale in the value of his judgment.³⁴⁹ On April 17, 2015, the court in the first action approved the sale of Rarity Bay assets to Salem Pointe Capital, LLC for the sum of \$5.75 million.³⁵⁰ Stooksbury will

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ Josh Flory, *Name change for Rarity Pointe*, PROPERTY SCOPE (Mar. 29, 2015 9:48 AM), http://propertyscope.knoxnews.com/2012/08/30/name_change_for_rarity_pointe/.

³⁴⁶ WindRiver, *Amenities*, WINDRIVER: A LAKEFRONT AND GOLF COMMUNITY (Apr. 3, 2015, 2:23 PM), <http://windriverliving.com/amenities>.

³⁴⁷ Memorandum and Order at 10, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498-TAV-HBG (E.D. Tenn. Nov. 18, 2009) (No. 548).

³⁴⁸ *See generally* Complaint, *Stooksbury v. Ross, et al.*, No. 3:12-cv-00548-TAV-HBG (E.D. Tenn. Oct. 19, 2012) (No. 1).

³⁴⁹ Order, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498 (E.D. Tenn. Nov. 18, 2009) (No. 1436).

³⁵⁰ Memorandum and Order at 5-6, *Stooksbury v. Ross, et al.*, No. 3:09-cv-00498-TAV-HBG (E.D. Tenn. Nov. 18, 2009) (No. 1530).

receive the proceeds of the sale, subject to a reasonable fee for the receiver's services and an amount adequate to satisfy any "purportedly valid and priority liens" asserted by two separate Rarity Bay-related resident associations.³⁵¹

³⁵¹ Memorandum and Order, *supra* note 350, at 6.