

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION

In re:

TELLICO LANDING, LLC,	)	Case No. 11-33018
	)	Chapter 11
Debtor.	)	
	)	
PAMELA SNIDER, BOBBY L. and JOAN	)	
TONEY, KENNETH L. AND LEYANNE A.	)	
HARPER, GEORGE A. AND BRENDA P.	)	
FISHER, DENNIS M. and PATRICIA R.	)	
TERRY, SHERYL THOMSON, STEPHEN H.	)	
and KAYE T. MAYNARD, GARY W. and	)	
NANCY M. SCOTT, PREMIER TRUST OF	)	
NEVADA, TRUSTEE (for benefit of BILL and	)	
ANN ADDISON), KEITH A. and NANCY	)	
MCGARR, WILLIAM H. and STACEY D.	)	
BAUMHAUER, JAMES E. and BONI HEAD,	)	
STANLEY E. and SHEILA C. GOEHRING,	)	
TRUSTEES, DANA C. and BETSY V.	)	
CHRISTENSEN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adv. No. _____
	)	
TELLICO LANDING, LLC, and WINDRIVER	)	
INVESTMENTS, LLC,	)	
	)	
Defendants.	)	

ADVERSARY COMPLAINT

Come the plaintiffs, through counsel, and for their cause of action would show unto the Court as follows:

1. Tellico Landing, LLC (“debtor”) filed its Chapter 11 petition on June 27, 2011. The debtor has operated as a debtor in possession since that time. The debtor is a limited liability company formed on April 1, 1998, for the purpose of developing and

marketing certain lakefront real property located in Loudon County, Tennessee, which was known as Rarity Pointe. Upon information and belief, the owners of the debtor are LTR Properties ("LTR"), an entity owned solely by Michael L. Ross (50%), Ward S. Whelchel (25%), and Robert T. Stooksbury, Jr. (25%).

2. This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334 and the Standing Order of the District Court entitled Reference of Matters to the Bankruptcy Court. This is a core proceeding to determine the allowance or disallowance of claims and to determine the validity and the extent of liens asserted by plaintiffs pursuant to 28 U.S.C. §157(b)(2)(B) and (K).

3. The debtor, Tellico Landing, LLC, may be served with process through its registered agent for service, Michael L. Ross, 1010 William Blount Drive, Maryville, TN 37802, and its counsel, T. Lynn Tarpy, Hagood, Tarpy & Cox, PLLC, 2100 Riverview Tower, 900 S. Gay Street, Knoxville, TN 37902.

4. Defendant WindRiver Investments, LLC may be served through its registered agent for service, Lewis Howard, Jr., 4820 Old Kingston Pike, Knoxville, TN 37919.

#### COUNT I

5. The instant Adversary Complaint is brought by plaintiffs, owners and residents of property in Rarity Pointe for themselves, and the class of persons who are owners of property in Rarity Pointe, to have the Court declare and affirm their status as creditors of the debtor and for purposes of having the Court declare and impose equitable relief, including equitable liens and/or a constructive trust against property of the debtor as security for said claims.

6. Plaintiffs are property owners in the development known as Rarity Pointe

developed and marketed by the debtor. Plaintiffs are owners of one or more residential real estate lots in the Rarity Pointe development. Upon information and belief, approximately 250 residential property lots have been sold in Rarity Pointe prior to the filing of the instant bankruptcy case.

7. Plaintiffs are members of class of claimants who are too numerous to make joinder of all property owners practicable in the instant adversary proceeding.

8. The issue addressed in the instant adversary proceeding, including both questions of fact and law, is common to all property owners in Rarity Pointe.

9. The claims being asserted by plaintiffs are typical of claims that would be asserted by all property owners, and the defenses that will be asserted by the debtor to said claims are common to all property owners. The plaintiffs believe that they can and will fairly and adequately protect the interest of all property owners related to the claims and issues being asserted herein.

10. Plaintiffs assert that bringing separate actions by numerous property owners would create a risk and be dispositive of the interest of other property owners who would be prospective class members and who are not parties to this adversary proceeding, and that the debtor has acted similarly with respect to all property owners as it regards the issues being addressed in the instant adversary proceeding.

11. Pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure this action qualifies as one suitable for classification of a class action and that the plaintiffs are suitable representative parties of the class and property owners in Rarity Pointe are capable of maintaining and prosecuting this action for the benefit of all property owners in Rarity Pointe and ask that the Court certify this matter as class action and that the plaintiffs be designated as a class representative of said class action.

COUNT II

12. Plaintiffs adopt and incorporate herein the facts and allegations set forth above in Count I.

13. Plaintiffs purchased real property in the Rarity Pointe community prior to the filing of the instant Chapter 11 case. Plaintiffs may have purchased their property directly from the debtor, the various entities owned and operated by Michael L. Ross during the different phases of the Rarity Pointe development, or were secondary purchasers from persons or entities other than the debtor or Ross related entities.

14. Irrespective of whom the plaintiffs and other property owners purchased their Rarity Pointe property from, by virtue of conditions imposed by the debtor through LTR and a document entitled, "Declaration of Covenants, Conditions, and Restrictions for Rarity Pointe" ("The Declarations"), each purchaser of property in Rarity Pointe was required to pay in addition to the purchase price of the property, an initiation deposit into a social membership club of the development. Attached hereto as Exhibit 1 is a copy of Section 14.10(a) of The Declarations concerning the social membership deposit.

15. Property owners were required to pay, in addition to the price of their lots, a social membership deposit to or for the benefit of the debtor in an amount that varied between \$10,000.00 and \$20,000.00 per lot, depending upon timing of the purchase of their lots.

16. Representations and literature were provided to prospective purchasers in Rarity Pointe that social members of the Rarity Pointe Club, and the monies paid for such purposes, would be provided and entitled to use amenities of the community, including pools, tennis court, recreation facilities, exercise facilities, and the clubhouse that was to be constructed in the development.

17. Specifically excluded from the social membership was any rights in golf privileges to the private golf club that was being constructed on the premises. Owners who sought to have membership in the private golf club being constructed in the development had to pay an additional deposit and membership fee to have privileges therein.

18. Based upon the number of lots sold in the Rarity Pointe, and based upon the social membership deposits paid with the purchase of said lots, upon information and belief, \$3,500,000.00 to \$4,500,000.00 was paid by property owners in social membership deposits to or for the benefit of the debtor for this purpose.

19. To date, and up to and including the time of the filing of the Chapter 11 bankruptcy by the debtor, no such amenities have been constructed for property owners that were promised by the debtor in exchange for the social membership deposits that were collected. Upon information and belief, the social membership deposits were not escrowed for construction of the subject amenities.

20. However, as part of the development of the Rarity Pointe community to date, the debtor, or its managing member, did construct a marina and a golf course in the development.

21. The marina and the golf course were constructed as private amenities that were not made available to social members.

22. Upon information and belief, and based upon the testimony of Michael L. Ross at the 341 meeting of creditors, the debtor, or its managing member, used the deposits paid by property owners in construction of the golf course in the Rarity Pointe. As mentioned above, the property owners who paid social membership deposits did not obtain the privileges or rights related to the golf course.

23. In exchange for the payments by property owners of the social membership deposits referenced herein, the property owners have received no benefit or value for the deposits and have been provided no amenities consistent with the representations made by the debtor, its agents, or representatives.

24. Upon information and belief, and based upon documents and agreements between the debtor and its members, LTR was responsible for and required to, at its sole expense, pay for the construction of the golf course in exchange for its agreement to receive said property upon completion.

25. The social membership deposits paid by property owners were not supposed to be used or designated for the construction of the golf course, and the social membership deposits of the plaintiffs and property owners was inappropriately used by or for the benefit of the debtor in improving its real estate, specifically in the construction of the golf course.

26. Plaintiffs allege that the debtor, its agents, and representatives misrepresented to property owners the amenities to be provided for social members in Rarity Pointe, and further misappropriated and misapplied the social membership deposits paid by plaintiffs and property owners in the use of said deposits for construction of the golf course. The debtor's property was improved and unjustly enriched from the misapplication and misuse of the social membership deposits. Plaintiffs, for themselves and all property owners, seek to have this Court declare and determine that they have valid and existing claims against the debtor for their respective payment of social membership deposits in conjunction with the purchase of the property.

27. Furthermore, plaintiffs seek equitable relief from the Court and ask for the

imposition of an equitable lien and/or a constructive trust upon the debtor's property, or at a minimum, the golf course property and that same be held as security for the claims of the property owners.

28. Defendant WindRiver Investments, LLC is named in the instant action as it is a secured creditor and currently holds liens against the property of the debtor. The plaintiffs do not contend or allege that any of the conduct referenced herein is attributable to WindRiver Investments, LLC.

WHEREFORE, plaintiffs pray as follows:

1. That the instant Adversary Complaint and Summons be issued and served upon the defendants and that they be required to answer according to the Federal Rules of Bankruptcy Procedure which incorporate the Federal Rules of Civil Procedure herein;

2. That the Court certify this matter as a class action and certify that plaintiffs are suitable representatives for said class of property owners;

3. That the Court determine and validate that plaintiffs, and all similarly situated property owners, be entitled to receive claims based upon the social membership deposits paid by the respective property owners;

4. That the Court determine that plaintiffs, and all property owners in Rarity Pointe, are entitled to equitable relief, and that the Court impose an equitable lien and/or constructive trust upon the property of the debtor for the benefit of property owners; and

5. That the Court award plaintiffs, and all property owners, any other relief to which they may be entitled.

Respectfully submitted, this 14<sup>th</sup> day of October, 2011.

/s/ F. Scott Milligan

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865-522-3311  
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14.10. Club Membership and Other Club Matters.

(a) Mandatory Social Membership. Every Owner, other than the Declarant, Declarant-Related Entity, or a Builder, shall be a "Social Member" of the Rarity Pointe Club (the "Club"), but shall have the right to upgrade as set forth in Section 14.11 below. There shall be only one (1) Social Membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall be subject to the usage rules and requirements established by the Club in the Club's sole discretion from time to time. All Owners will be subject to the bylaws, rules, regulations, and charges of the Club and shall be responsible for the payment of Social Membership Dues to the Club. At the closing of a Unit, each Owner shall be required to remit an initiation deposit applicable to a Social Membership to the Club. ~~Upon closing and payment of such deposit, the Owner's membership shall become effective and the Social Membership shall entitle the Owner and his or her family and guests to Membership privileges at the Club in accordance with the Club's membership program. The Social Membership does not include golfing privileges at the Club.~~ The Social Membership does not include golfing privileges at the Club. The Owner shall have no right of reimbursement or refund for initiation fees or deposits related to the Social Membership except in accordance with the Club's membership plan, and the Social Membership is non-transferable except in connection with the sale of the Unit relating to such Social Membership.

(b) Mandatory Social Membership Dues. Commencing on the date of closing of the Unit the Club shall be entitled to charge and collect dues directly from each Owner on an annual basis ("Social Membership Dues"), prorated from the date of closing on the purchase of a Unit. The Social Membership Dues shall be payable by each Owner to the Club without set-off, diminution or abatement for any reason. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to have notice of liability for these Social Membership Dues and to covenant and agree to pay these assessments. All such Social Membership Dues or other charges, together with interest not to exceed the maximum rate allowable by law, late charges of ten percent (10%) per annum or the highest amount allowable by law, whichever is greater, costs of collection, and reasonable attorneys fees shall be the personal obligation of the Owner of such Unit at the time the Social Membership Dues or other charges arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any Social Membership Dues and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid Social Membership Dues or other charges which accrued prior to such acquisition of title. No Owner shall be exempt from liability for Social Membership Dues by non-use of the Club, abandonment of the Unit, or any other means, except as may be provided in the Club's membership program. The obligation to pay Social Membership Dues is a separate and independent covenant on the part of each Owner.

(c) Lien for Social Membership Dues. The Club shall have a lien against each Unit to secure payment of all or any portion of the initiation deposit which was not paid at closing and delinquent Social Membership Dues, as well as interest at a rate to be set by the Club (subject to the maximum interest rate limitations of Tennessee law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (ii) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (iii) the lien(s) of the Association pursuant to Section 8.7 of this Declaration, regardless of the date of recording of such lien(s). The Club's lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure as permitted under Tennessee law.

Notwithstanding anything contained herein to the contrary, as a condition precedent to the Club's obtaining lien rights, and/or enforcement rights pursuant to the terms of this Section, the Club must first provide the Association with twenty (20) Days prior written notice of the Club's intent to record a lien against a Unit, and/or proceed with other judicial or non-judicial foreclosure of the lien.