



SO ORDERED.

SIGNED this 15 day of May, 2009.

A. Thomas Small
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

<p>IN THE MATTER OF:</p> <p>Anderson Homes, Inc., et al Debtors</p>	<p>Case No. 09-02062-8 Consolidated for Administration Chapter 11</p>
<p>Third Order Authorizing Continued Use of Cash Collateral and Providing Notice of Final Hearing</p>	

This matter came before the Court after due notice and hearing to consider the “Motion for Authorization to Use Cash Collateral” (the “Motion”) filed by Anderson Homes, Inc. (“Anderson”), Bridgewater Land Resource, LLC (“Bridgewater”), Land Resource Group of Raleigh, Inc. (“LRG”), and Vanguard Homes, Inc. (“Vanguard” and together with Anderson, Bridgewater, and LRG, the “Debtors”) pursuant to §363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Objections to the Motion were filed by a number of parties, and following initial hearings interim orders were entered March 27, 2009 (the “Initial Order”) and April 24, 2009 (the “Second Order” and collectively, the “Prior Orders”), each of which provided notice of a subsequent hearing.

After considering the matters set forth in the Motion, the evidence presented, the objections filed and the comments of parties in interest, the Court makes the following findings, conclusions and orders:

1 On March 16, 2009 (the “Petition Date”), the Debtors filed voluntary petitions seeking relief under Chapter 11 of the Bankruptcy Code, and operate as debtors-in-possession.

2 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3 The Debtors are engaged in the development, construction and sale of residential properties in the form of single-family homes, townhomes and condominiums. Such properties are held for sale to the public and constitute the Debtors' inventory, which the Debtors sell in the ordinary course of business.

4 As more particularly set forth in the schedules, the Debtors own, construct improvements on, and sell (i) single-family houses and townhomes in subdivisions known and referred to as Edgewater, Bridgewater, Bridgewater West, Cobblestone, Haw Village, Ridgefield, Amberlynn Valley, Cane Creek, Muirfield Village, Pine Valley, Quail Meadows, Thornton Commons Place, Willow Ridge, Creekside at Landon Farms, Keystone Crossing, Sterling Ridge, Jeffries Creek, Briar Chapel, and Villas at Forest Hills, and (ii) condominiums known as Blount Street Commons (collectively, the "Sale Properties").

5 In conjunction with the acquisition and development of the Sale Properties, the Debtors arranged financing with a number of lenders (the "Construction Lenders"), each of whom hold deeds of trust to secure the funds advanced to complete the improvements:

- a. Bank of America ("BofA").
- b. Capital Bank ("Capital").
- c. KeySource Bank ("KeySource").
- d. Paragon Commercial Bank ("Paragon").
- e. RBC Centura Bank ("RBC").
- f. Regions Bank ("Regions").
- g. Wachovia Bank ("Wachovia").

6 The Debtors are informed and believe that other creditors hold deeds of trust on certain Sale Properties, as follows:

- a. James D. Goldston and William Goldston ("Goldston").
- b. Stock Building Supply, Inc. ("Stock").

7 The Debtors contracted with various suppliers, contractors or other parties (the "Lien Claimants") to supply materials and/or provide labor for the purpose of constructing the

improvements located on and thus an affixed part of the Sale Properties. An official committee (the "Committee") has been formed to represent the interests of the Lien Claimants.

8 Pursuant to the Second Order: (i) on or before May 15, 2009, or such later date as may be set by the Court after notice and hearing, the Construction Lenders shall file proofs of claim sufficient to evidence their liens upon property of the Debtors' respective estates, and (ii) on or before June 15, 2009, or such later date as may be set by the Court after notice and hearing, the Debtors, the Committee and any other party in interest must object to or seek to avoid or subordinate any of the Construction Lenders' claims, liens, security interests or rights of setoff or be barred thereafter from bringing any such challenge.

9 By separate motions the Debtors have sought, and in the future will file similar motions and continue to seek Orders (i) approving sale contracts, (ii) authorizing the Debtors to convey Sale Properties and pay certain closing costs, including broker's commissions, from the sale proceeds, and (iii) transferring all actual or potential liens to the proceeds of such sales.

10 In each instance, the net proceeds from the sale and transfer of the Sale Properties would constitute "Cash Collateral" as that term is defined in the Bankruptcy Code, the use of which is subject to the restrictions set forth in § 363.

11 The Debtors are informed and believe that the Sale Properties are subject to liens in favor of the Construction Lenders, in each instance securing indebtedness which in the aggregate is greater than the value of the individual property, either by means of blanket deeds of trust which secure the promissory notes without allocation among particular properties (notwithstanding that the availability of advances may be determined on a lot-by-lot basis) or by means of notes and deeds of trust which are expressly cross-collateralized.

12 The Debtors contend that the Stock deeds of trust are subject to avoidance under § 547 and/or § 548 of the Bankruptcy Code and have commenced an adversary proceeding in that regard, and such liens are thus subject to bona fide dispute. The Stock deed of trust is a first lien on Lots 440-453, 455-461, and 524-530, inclusive, Edgewater Townhomes (collectively referred to in the Prior Orders as the "Adequate Protection Lots").

13 The Debtors contend that the liens asserted by Goldston are junior to the liens of the Construction Lenders and are likely to be deemed unsecured within the meaning of § 506(d) of the Bankruptcy Code, and the Goldston liens are thus subject to bona fide dispute.

14 The Debtors contend that the actual or potential liens of the Lien Claimants are unliquidated, unknown in amount and relative priority, and likely to be deemed unsecured within the meaning of § 506(d) of the Bankruptcy Code, and the actual or potential liens of the Lien Claimants are thus subject to bona fide dispute.

15 The Debtors are dependent upon continued and uninterrupted use of the proceeds from such sales in the ordinary course of business for revenue. While the Debtors had unrestricted cash in their accounts as of the Petition Date, the Debtors need to receive and use the proceeds of sales to pay on-going costs of operating, insuring, preserving, and protecting the business and property of the estate. If not permitted to use Cash Collateral to pay ordinary operating expenses, the Debtors will have to close down operations forthwith. Such precipitous action, if required, would render reorganization impossible and severely reduce the fair market value of the estate, resulting in financial loss to all parties in interest.

Based upon the foregoing, the Court concludes that continued use of Cash Collateral is necessary and that an Order granting such relief is necessary, appropriate, and in the best interests of the Debtors' estates, and for good and sufficient reasons appearing it is hereby ORDERED as follows:

1 The Debtor may continue to use Cash Collateral on an interim basis (i) generally in accordance with the budget attached to the Second Order, (ii) subject to the terms, conditions and limitations set forth below, and (iii) as may otherwise be permitted by this Court after further notice and hearing.

2 As adequate protection for the use of Cash Collateral, the Debtors shall provide the following, subject to further orders of the Court after notice and hearing:

- a. The Debtors will pay the Construction Lenders interest accruing post-petition on the outstanding indebtedness at the contract rate, monthly in arrears.
- b. At each closing of a Sale Property, the Debtors shall apply the gross sale proceeds (after credit for the purchaser's deposit if received prepetition) to:
 - i. Seller concessions as provided in the contract of sale.
 - ii. Seller closing costs.
 - iii. Where applicable, co-broker's commissions.
 - iv. In-house commissions payable to Builders Choice Real Estate.

- v. The principal amount the respective Construction Lender has advanced to fund the acquisition and development of such property, plus interest on such amount at the contract rate.
- c. From the proceeds payable to Seller at closing, the Debtors shall apply such amount to:
 - i. Costs to complete the improvements, whether advanced by the Construction Lender or the Debtors.
 - ii. In-house commissions payable to the Debtors' employees.
- d. The remaining proceeds (the "Net Sale Proceeds") shall be disbursed or held as follows:
 - i. As adequate protection payments to each of the Construction Lenders upon closing of a Sale Property which is subject to their first priority lien and except as provided below, an amount equal to twenty-five percent (25%) of the Net Sale Proceeds.
 - (1) The adequate protection payment to Wachovia, pending resolution of the letters of credit issued by Wachovia on behalf of the Debtors, shall be fifty percent (50%) of the Net Sale Proceeds.
 - (2) The adequate protection payment to Capital Bank upon the sale of a condominium unit in Blount Street Commons shall be such amount as the parties may agree or as may be ordered by the Court after notice and hearing.
 - ii. The application by a Construction Lender of adequate protection payments to principal, interest or attorneys' fees and costs shall be made on an interim basis and without prejudice to a later determination of whether such Construction Lender was over-secured.
 - iii. An amount equal to ten percent (10%) of the Net Sale Proceeds shall be set aside and held by the Debtors for purposes of consummation of a confirmed plan of reorganization, or such other purposes as may be approved by the Court after notice and hearing.
 - iv. The remainder of the Net Sale Proceeds shall be paid to the Debtors.

- v. Any amounts escrowed at a closing shall, upon disbursement from escrow to the Debtors, be held subject to the lien of the Construction Lender or any other party holding a lien upon such sale proceeds at closing, pending further orders of the Court.
- vi. If (i) the actual “Costs to Complete” amount exceeds the amount shown in the Schedule of Sales attached to the respective Sale Motion by more than 20% of the projected amount, or (ii) the Net Sale Proceeds are insufficient to pay the Construction Lender the full amount of the funds so advanced plus any outstanding interest thereon, then the sale cannot proceed without the consent of the respective Construction Lender.
- e. The replacement lien upon the Adequate Protection Lots granted in on an interim basis in the Prior Orders is hereby vacated.
- f. The Debtors shall provide the Construction Lenders and to any other party having an interest in Cash Collateral a super-priority administrative expense claim pursuant to Section 507(b) to the extent the use of their respective Cash Collateral results in a decrease in the value of such entity’s interest in such property.
- g. The Debtors shall timely provide the respective Construction Lenders and the Committee with (i) reports as to the closed sales, with copies of the HUD-1 closing statements, and (ii) such other financial reports in form as may be reasonably requested by the Construction Lenders and the Committee.

3 To the extent that a Construction Lender or the Committee has an objection to the items paid or provided for as set forth in the monthly reports or other reports of operations filed or furnished to said party, or objects to a proposed budget or to a specific manner in which Cash Collateral is being used, then such party may, upon ten (10) days notice to the Debtors and opportunity to cure: (i) seek an order of the Bankruptcy Court restraining such payments or usage as not being in conformity with this Order; or (ii) seek an Order terminating further authority to use Cash Collateral altogether.

4 Notwithstanding any suspension or termination of the right to use Cash Collateral (a “Termination Date”), the Debtors shall be permitted to carve out from Cash Collateral and use an aggregate amount necessary to pay all Permitted Trailing Expenses. As used herein, the term “Permitted Trailing Expenses” shall mean, on the Termination Date, the following expenses to

the extent incurred post-petition and prior to such Termination Date but in an aggregate amount not to exceed the aggregate expenditures set forth in the approved budget through such Termination Date:

- a. Unpaid salary or other employee benefits accrued through such Termination Date and all related payroll taxes.
- b. Any amounts deducted or to be deducted from an employee's wages that accrued on or before such Termination Date, but only the extent that the Debtors have not paid over or contributed such deducted amounts to the appropriate recipient.
- c. Quarterly fees to the United States Bankruptcy Administrator pursuant to 28 U.S.C. § 1930(a)(7).
- d. Professional fees and expenses for professionals for the Debtors, the Committee and any other official committee (if formed), so long as such fees and expenses are ultimately awarded by a final order of the Court.

5 The terms of this Order shall be binding upon any other official committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code.

6 A final hearing on this Motion will be held at 2:00 o'clock p.m. on June 22, 2009, in the U.S. Bankruptcy Court, Raleigh, N.C., at which time the Court will further consider the Motion for Authorization To Use Cash Collateral.

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