

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
BENTLEY PREMIER BUILDERS, LLC § Case No. 13-41940-btr
Debtor. § Chapter 11
§

**RESPONSE TO SANDY GOLGART’S MOTION FOR RECONSIDERATION
TO ALTER OR AMEND JUDGMENT AND RELATED RELIEF**

THE PHILLIP M. POURCHOT REVOCABLE TRUST, sole member of the reorganized Debtor (the “Pourchot Trust”), files this Response to Motion for Reconsideration to Alter or Amend Judgment and Related Relief, Related to Orders on Confirmation of Plans per Federal Rules 59 and 60, and Bankruptcy Rules 9023 and 9024, filed by Sandy Golgart (“Golgart”) [Docket No. 647], and in support of such would show unto the Court as follows:

BACKGROUND

1. This Court held the contested confirmation hearings on March 28, 2014, March 31, 2014, and April 1, 2014, with closing arguments held on April 10, 2014.
2. Findings of Fact and Conclusions of Law were entered by this Court on June 13, 2014 [Docket No. 603].
3. On June 26, 2014, this Court entered an Order confirming the Pourchot Trust and Starside, LLC (“Starside”) Plan of Reorganization [Docket No. 614], and an Order denying Golgart’s Plan of Reorganization [Docket No. 613] (the “Confirmation Orders”).

4. On July 10, 2014, Golgart filed her Motion for Reconsideration of the Court's Orders set forth above [Docket No. 647] (the "Motion"). Golgart did not seek a stay of the Confirmation Orders.

5. The Pourchot Trust filed its Notice of Effective Date of the Joint Chapter 11 Plan of Reorganization for Bentley Premier Builders, LLC on July 11, 2014 [Docket No. 649].

6. In her Motion, Golgart admits she is seeking reconsideration only of certain specified findings and conclusions (Golgart Motion ¶ 14), and not the Confirmation Orders themselves.

7. Golgart seeks to modify the Court's Confirmation Orders to alter or amend fifty-three (53) portions of the Court's sixty-two (62) Findings of Fact in Section III titled "Factual Background." At times, Golgart seeks to alter or amend several portions of one of the Court's particular finding of fact.

8. Although Golgart is seeking to alter or amend the overwhelming majority of the Court's findings, she has neglected to cite to any portions of the record, including testimony or exhibits, in support of her argument. In fact, Golgart has not even ordered a complete transcript to date. Instead, she appears to be making new arguments, rehashing prior arguments made, or reciting what she wished the facts were. Interestingly, Golgart has not sought to amend or alter any findings related to the seminal issue of valuation of the Debtor's assets.

9. A review of the entire record before the Court indicates the Findings of Fact and Conclusions of Law of the Court are supported by the record; accordingly, the Pourchot Trust requests such Motion be overruled.

10. Golgart has challenged Findings in Sections III, IV and V of the Order. The Pourchot Trust has responded to each of the challenged findings and broken the responses down into the three (3) categories shown below:

- A – those Findings that have ample support in the record;
- B – those Findings that have support in the record and the Court made a logical inference from the facts; and
- C – those Findings which might be amended, but which have no impact on the ultimate decision.

ARGUMENT

A. The Findings were supported by the record.

11. As set forth above, Golgart's arguments are contrary to the record before the Court.

Such include the following findings as to Docket No 603:

Section III – ¶ Nos. 5, 6, 7, 10, 11, 12, 14, 15, 16, 18, 19, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, 34, 37, 39, 41, 44, 45, 46, 49, 50 and 53

Section IV – Finding ¶ 6

Section V – Conclusion ¶ 7

Accordingly, such Findings should not be amended or altered.

B. Logical inferences were supported by the facts.

12. Additionally, Golgart is re-arguing certain points already determined by this Court and the Court drew a logical inference supported by the facts. Such include findings:

Section III – ¶ Nos. 3, 4 (as to when lots were purchased), 5, 10, 17, 18, 29, 34, 35, 37, 40, 42, 43, 43 (fn. 5) and 47

C. Any amendments of certain facts are not needed.

13. In the event the following findings could be altered or amended after a review of the entire record, such would have no impact on the ultimate decision regarding confirmation and, as a result, the Motion should be denied:

Section III – ¶ No. 4 (as to whether Hawkins Welwood is a homebuilder or a real estate company as Hawkins Welwood is both a homebuilder and a seller of real estate)

¶ No. 8 (as to the approximately .09% difference in the interest rate between what the Pourchot Trust was charging Bentley and what it was paying to Credit Suisse)

14. None of the contested fifty-three (53) findings, if amended or altered, would impact the Confirmation Orders.

D. Golgart presented the Starside acquisition of the Sovereign note as an issue at confirmation.

15. Golgart objects to Finding ¶ 27 in Section III as to Pourchot’s alleged violation of Section 5.09 of the Bentley Company Agreement on the basis that this issue related to “ultimate allowance of claims and counterclaims” which were not an issue at the confirmation hearings. She further argues Conclusion ¶ 7 in Section V should be altered as such was not an issue at the confirmation hearings. In ¶ 7, the Court concluded Starside’s acquisition of the Sovereign Bank note was in good faith and that such acquisition did not violate the Bentley Company Agreement.

16. Golgart conveniently omits the fact that these issues were directly raised by her at the confirmation hearings. Further, in both Golgart’s Memorandum [Docket No. 483] filed after the second day of the confirmation hearings and her Closing Brief [Docket No. 524], she contends the acquisition of the Sovereign Bank debt was in bad faith and done to divest her of her alleged equity in the Company thereby arguing her Plan should be confirmed and the Pourchot Trust’s Plan be denied. Golgart further requested that the Pourchot Trust and Starside claims be rejected because

of Pourchot's inequitable conduct in the acquisition of the Sovereign note. Golgart contended that Pourchot's acquisition of the Sovereign Bank debt is voidable as a matter of Texas law and requested that this Court set aside both Starside's and the Pourchot Trust's claims in the bankruptcy [Docket No. 483, ¶ 23]. Golgart's 11-page Memorandum, filed during the confirmation hearing, addressed her contentions that the Secured Lenders' claims should be set aside as such were improperly obtained through Pourchot's inequitable conduct.

17. Golgart's concern that Section III Finding ¶ 27 and Section V Conclusion ¶ 7 may negatively impact her claims against Pourchot individually in the pending state court action is not sufficient reason for this Court to set aside findings made on issues presented squarely before this Court relating to confirmation.

18. Upon receipt of the entire record, the Pourchot Trust reserves the right to further amend its response. Should the Court desire oral argument or complete citations to the transcript to assist the Court in evaluating the Motion, we are prepared to do so.

19. For the reasons stated herein, the Pourchot Trust requests that Golgart's Motion be denied in its entirety.

WHEREFORE, PREMISES CONSIDERED, THE PHILIP M. POURCHOT REVOCABLE TRUST prays Sandy Golgart's Motion for Reconsideration to Alter or Amend Judgment be denied in its entirety, and for whatever and further relief to which the Pourchot Trust may be justly entitled.

Dated: July 29, 2014.

Respectfully submitted,

JONES, ALLEN & FUQUAY, L.L.P.

8828 Greenville Avenue

Dallas, Texas 75243

Telephone: (214) 343-7400

Facsimile: (214) 343-7455

By: /s/ Laura L. Worsham

Nathan Allen, Jr.

State Bar No. 10710000

Laura L. Worsham

State Bar No. 22008050

Attorneys for THE PHILLIP M. POURCHOT
REVOCABLE TRUST, SOLE MEMBER OF THE
REORGANIZED DEBTOR

and

COX SMITH MATTHEWS INCORPORATED

1201 Elm Street, Suite 3300

Dallas, Texas 75270

Telephone: (214) 698-7800

Facsimile: (214) 698-7899

Mark E. Andrews

State Bar No. 01253520

Aaron M. Kaufman

State Bar No. 24060067

Attorneys for THE PHILLIP M. POURCHOT
REVOCABLE TRUST, SOLE MEMBER OF THE
REORGANIZED DEBTOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 29, 2014, a true and correct copy of the foregoing Response was filed with the Court and served on all parties requesting electronic notice through this Court's ECF system.

/s/ Laura L. Worsham

Laura L. Worsham