

ORDERED in the Southern District of Florida on 12/08/08



Raymond B. Ray
Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

In re:)
LEVITT AND SONS, LLC,)
a Florida limited liability company, *et al.*,)
Debtors.)
_____)

Chapter 11
Case Number: 07-19845-BKC-RBR
Jointly Administered

ORDER APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF LIENS AND (B) GRANTING RELATED RELIEF

This matter is before the Court on the joint motion of Levitt and Sons of Horry County, LLC, Levitt and Sons of Hall County, LLC, Levitt and Sons of Cherokee County, LLC (the "Levitt-Cherokee Debtor"), Levitt and Sons of Paulding County, LLC, Levitt and Sons of World Golf Village, LLC and Levitt and Sons of Manatee County, LLC (collectively, the "Wachovia Debtors") and Soneet Kapila, as Chief Administrator of the Wachovia Debtors, for an order under 11 U.S.C. §§ 105(a) and 363 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") and Fed. R. Bankr. P. 6004 (i) approving the sale



of assets to SECL-LC/LL/PC, LLC (“SEC”) or another successful bidder at auction, free and clear of liens, claims, interests, and encumbrances and (ii) approving bid procedures, overbid protection and a breakup fee (including notice and auction procedures) (D.E. No. 3832) (the “Sale Motion”). The Court held a hearing on the Sale Motion on December 8, 2008 to approve the sale (the “Sale Hearing”). The Court has reviewed the Sale Motion, considered the evidence and heard argument of counsel. After due deliberation and good and sufficient cause existing, the Court makes the following findings of fact:

A. This Court has jurisdiction over the Sale Motion and the transactions contemplated by the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (N).

B. The Levitt-Cherokee Debtor owns and is in the business of developing Seasons at Laurel Canyon, a planned community located in Cherokee County, Georgia, consisting primarily of single family homes (the “Development”).

C. The Levitt-Cherokee Debtor and SEC entered into the Purchase Agreement¹ attached to the Sale Motion for the sale of Assets to SEC for the Purchase Price of \$18,000,000, free and clear of any liens, claims, interests, and encumbrances.

D. Pursuant to section 10.7 of the Purchase Agreement, SEC has the right to assign and transfer its rights and obligations under the Purchase

¹ All capitalized terms not otherwise defined in this Order have the same meaning provided to them in the Motion.

Agreement to one or more affiliates without the consent of the Levitt-Cherokee Debtor. Effective as of December 5, 2008, SEC executed and delivered an Assignment and Agreement from the members of SEC to Lifestyle at Laurel Canyon, LLC, a Georgia limited liability company ("Lifestyle"), assigning and transferring SEC's rights and obligations under the Purchase Agreement to Lifestyle. The provisions of the Purchase Agreement are binding upon Lifestyle, and Lifestyle assumes all the obligations of SEC under the Purchase Agreement.

E. The Levitt-Cherokee Debtor solicited the highest or otherwise best offer for the Assets in accordance with bid procedures approved by the Breakup Fee and Bid Order (D.E. No. 3948; the "Bid Procedures"). No competing bid was received for the Assets, and the Levitt-Cherokee Debtor believes the Purchase Price provided in the Purchase Agreement represents the highest or otherwise best offer for the Assets.

F. The Chief Administrator has provided interested parties (including all parties asserting claims or interests in the Assets) with proper notice of the Sale Motion and the Sale Hearing, in accordance with 11 U.S.C. §§ 102(1), 105(a), 363 and Fed. R. Bankr. P. 2002(a) and 6004(a), the Notice, Case Management and Administrative Procedures Order (D.E. No. 72) and the Breakup Fee and Bid Order. This notice is due, proper and sufficient notice to provide affected parties adequate opportunity to determine that their rights are to be affected

and afforded such parties an opportunity to object to the sale of the Assets at the Sale Hearing.

G. The Levitt-Cherokee Debtor and the Chief Administrator conducted the sale process in compliance with the Breakup Fee and Bid Order, the Bankruptcy Code and all other orders entered in these cases. The Levitt-Cherokee Debtor and the Chief Administrator did not receive any bids for the Assets other than SEC's bid evidenced by the Purchase Agreement, and the Auction was cancelled pursuant to the Bid Order. The Levitt-Cherokee Debtor and the Chief Administrator have given all interested parties a reasonable opportunity to make a highest or otherwise best offer for the Assets. In its sound business judgment, the Levitt-Cherokee Debtor determined that the Purchase Price provided in the Purchase Agreement attached to the Sale Motion was the highest or otherwise best offer for the Assets.

H. The Levitt-Cherokee Debtor (i) has full corporate power and authority to execute and consummate the Purchase Agreement, and all related documents, and the sale of the Assets has been duly and validly authorized by all necessary corporate action of the Levitt-Cherokee Debtor; and (ii) no consents or approvals, other than those expressly provided for in the Purchase Agreement, are required to consummate the transactions contemplated by the Purchase Agreement.

I. Pursuant to the DIP Order (D.E. No. 1366), the Chief Administrator has the ability to convey the Assets on behalf of the Levitt-Cherokee

Debtor to Lifestyle on the terms and conditions of this Order and the Purchase Agreement.

J. The Levitt-Cherokee Debtor has good business reasons to sell the Assets.

K. Neither Lifestyle nor any of its affiliates is an “insider” of any of the Levitt Debtors, as that term is defined in 11 U.S.C. § 101.

L. The Levitt-Cherokee Debtor, the Chief Administrator and SEC proposed, negotiated and entered into the Purchase Agreement without collusion, in good faith and at arms-length bargaining positions. Neither the Levitt-Cherokee Debtor, the Chief Administrator, SEC or Lifestyle has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under 11 U.S.C. § 363(n).

M. Lifestyle is a good faith purchaser within the meaning of 11 U.S.C. § 363(m) and, as such, is entitled to the protections afforded by that section.

N. The consideration Lifestyle will give the Levitt-Cherokee Debtor for the Assets pursuant to the Purchase Agreement (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the Assets; and (iii) constitutes reasonably equivalent value.

O. The Levitt-Cherokee Debtor’s transfer of the Assets to Lifestyle pursuant to the Purchase Agreement will be a legal, valid, and effective

transfer of the Assets. The Levitt-Cherokee Debtor's transfer of the Assets to Lifestyle indefeasibly will vest Lifestyle with good and valid title in and to the Assets free and clear of any Claims (as defined below). Any Claim in or against the Levitt-Cherokee Debtor, its insiders, or the Assets will attach to the net proceeds of the sale with the same effect, validity, enforceability and priority of such Claims, if any, as such Claims had against the Assets prior to the sale contemplated hereby, subject to any rights, claims, defenses and objections of the Levitt-Cherokee Debtor and all interested parties with respect to such Claims.

P. The Levitt-Cherokee Debtor may sell and transfer the Assets in accordance with the terms and conditions of the Purchase Agreement free and clear of all Claims, because (i) the Court has already stripped the Assets of any Liens junior to Wachovia's position and (ii) Wachovia consents to the sale of the Assets as set forth in the Purchase Agreement. Any holders of Claims who did not object, or who withdrew their objections to the Sale Motion, are deemed to have consented to the sale pursuant to 11 U.S.C. § 363(f)(2).

Q. The Levitt-Cherokee Debtor will cause the net proceeds from the sale to be paid to Wachovia in accordance with the DIP Order (D.E. No. 1366).

R. Except as expressly set forth in the Purchase Agreement, Lifestyle will have no responsibility for any liability, claim or other obligation of or against the Levitt-Cherokee Debtor related to the Assets by virtue of the transfer of the Assets. Lifestyle will not be deemed, as a result of any action taken in

connection with the purchase of the Assets, (i) to be a successor to the Levitt-Cherokee Debtor or (ii) to have, *de facto* or otherwise, merged with or into the Levitt-Cherokee Debtor. Lifestyle does not acquire or assume any liability, warranty, or other obligation of the Levitt-Cherokee Debtor, except as expressly set forth in the Purchase Agreement.

S. A sale on the terms and conditions of the Purchase Agreement, including without limitation, entry of an order providing a sale free and clear of Claims and providing that Lifestyle is not a successor of the Levitt-Cherokee Debtor, is consistent with the Bankruptcy Code and promotes the policies of the Bankruptcy Code to maximize value. Absent such finding, Lifestyle would be unwilling to pay the price for the Assets as provided for in the Purchase Agreement.

T. The Court's approval of the Purchase Agreement is in the best interests of the Levitt Debtors, their estates and their creditors. Accordingly, it is

ORDERED AND ADJUDGED THAT:

1. The Sale Motion is granted.
2. All objections to the entry of this order or to the relief granted and requested in the Sale Motion that have not been withdrawn, waived or settled at or before the Sale Hearing are denied and overruled on the merits.
3. The Purchase Agreement is approved in all respects. Pursuant to 11 U.S.C. §§ 105(a) and 363(b), the Levitt-Cherokee Debtor and the Chief Administrator are authorized and directed (subject to applicable Closing conditions

set forth in the Purchase Agreement) to consummate the sale approved by this Order, including transferring and conveying the Assets to Lifestyle pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

4. Pursuant to 11 U.S.C. § 363(b), the Levitt-Cherokee Debtor is authorized, directed and empowered to consummate and implement fully the Purchase Agreement, together with all additional instruments and documents that may be necessary to implement the Purchase Agreement. The Levitt-Cherokee Debtor and the Chief Administrator are authorized and directed to take all actions necessary for the purpose of assigning, transferring, granting, conveying, and conferring the Assets to Lifestyle.

5. Any agreements, documents, or other instruments executed in connection with the Purchase Agreement may be modified, amended, or supplemented by the parties in accordance with the terms of the Purchase Agreement without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Levitt Debtors' estates.

6. The Levitt-Cherokee Debtor will transfer the Assets to Lifestyle upon Closing of the sale free and clear of all Claims pursuant to 11 U.S.C. §§ 105(a) and 363(f). All non-assumed Claims not previously stripped, if any, will attach to the proceeds of the sale, with the same validity, enforceability, priority, force and effect they now have as against the Assets, subject to any rights, claims,

defenses and objections of the Levitt-Cherokee Debtor and all interested parties with respect to such Claims and Interests.

7. The Levitt-Cherokee Debtor will cause the proceeds from the

RRR (sale to be paid to Wachovia, to be applied in accordance with the DIP Order. The Debtors and the Joint Committee of Unsecured Creditors reserve all rights with regard to such application. *RRR*)

8. Lifestyle will provide the Levitt-Cherokee Debtor with reasonably equivalent value and fair consideration for the Assets under the Bankruptcy Code and applicable non-bankruptcy law. For that reason, the transfer may not be avoided under 11 U.S.C. § 363(n).

9. All entities that are presently, or upon Closing may be, in possession of some or all of the Assets are directed to surrender possession of the Assets to the Levitt-Cherokee Debtor. Prior to or upon the Closing, each of the Levitt Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Claims in the Assets, if any. In the event any creditor fails to release its Claims in the Assets, the Levitt-Cherokee Debtor and Lifestyle are each authorized to take any action necessary to do so including, executing and filing any statements, instruments, releases and other documents on such creditor's behalf. Lifestyle also is authorized to file, register or otherwise record a certified copy of this Order. Once this Order is so filed, registered or otherwise recorded, the Order constitutes conclusive evidence of the release of all Claims against the Assets as of the Closing.

10. Lifestyle has and will have acted in good faith in purchasing the Assets under Purchase Agreement as that term is used in 11 U.S.C § 363(m). For that reason, any reversal or modification of the Order on appeal will not affect the validity of the sale to Lifestyle, unless this Order is duly stayed pending such appeal.

11. Except as expressly stated in the Purchase Agreement and this Order, the Levitt-Cherokee Debtor's transfer of the Assets to Lifestyle will not result in (a) Lifestyle having any liability for any Claim against the Levitt-Cherokee Debtor or against an insider of the Levitt-Cherokee Debtor or (b) Lifestyle having any liability to the Levitt-Cherokee Debtor.

12. Lifestyle (and its affiliates, successors or assigns) will have no responsibility for any liability of the Levitt-Cherokee Debtor arising under or related to the Assets.

13. The transfer of the Assets to Lifestyle on the Closing Date shall be free and clear of any and all liens, encumbrances, claims, charges, defenses, offsets, recoupments and interests thereon and there against of whatever type or description, including, without limitation, restrictions on or conditions to transfer or assignment, liens, mortgages, security interests, pledges, hypothecations, control agreements, equities and other claims and interests (all such claims and interests described in this paragraph being referred to in this Order as the "Claim" or "Claims"), having arisen, existed or accrued prior to and through the Closing Date

(as defined in the Purchase Agreement), whether direct or indirect, monetary or non-monetary, arising at law or in equity, contract or tort, absolute or contingent, matured or unmatured, voluntary or involuntary, liquidated or unliquidated, of, by or against the Levitt-Cherokee Debtor, insiders of the Levitt-Cherokee Debtor or the Assets and further including, without limitation, the following:

- a. Claims arising through the Closing Date, if any, of any governmental unit for taxes;
- b. Any Claim arising through the Closing Date relating to any executory contract or lease (whether of personal or real property, or otherwise) affecting or in any way related to the Assets, without limitation, Claims of the Levitt-Cherokee Debtor's vendors, suppliers and/or customers arising from the Levitt-Cherokee Debtor's failure to perform its obligations to said parties whether such failure occurred prior to or on the Closing Date or whether such failure arose as a result of Lifestyle's election or before the Closing Date not to accept and/or perform such vendors', suppliers' or customers' account and/or orders subsequent to the Closing Date;
- c. Any Claim arising through the Closing Date relating to work performed by any contractor or materialman that would give rise to a mechanic's lien, or similar Claim, against the Assets;
- d. Any Claim arising through the Closing Date for attorneys' fees or other costs or expenses claimed by lessors, lessees, licensees or any other non-debtor parties to executory contracts or any lease;
- e. Any Claim arising through the Closing Date based on acts or omissions of the Levitt-Cherokee Debtor arising in tort, contract or otherwise, including, without limitation, Claims for successor liability; and
- f. Any Claim arising through the Closing Date relating to liability arising under federal, state or local revenue, tax, products liability, labor, employment, worker compensation or environmental laws, rules or regulations or with respect to Levitt-Cherokee Debtor's liability as distributor or a retailer.

- g. Any claim by any person or entity relating to any health or welfare benefit for the benefit of any current or former employee of the Levitt-Cherokee Debtor or their dependents or beneficiaries.

In addition, Lifestyle and its affiliates, successors or assigns or their respective properties (including the Assets) shall not be liable, by operation of law or otherwise, for any Claim by virtue of Lifestyle's purchase or subsequent operation of the Assets including, without limitation, claims of the type set forth in subparagraphs (a)-(g) hereinabove.

14. The purchase of the Assets by Lifestyle shall not cause Lifestyle or its affiliates, successors or assigns or their respective properties (including the Assets) to be deemed a successor in any respect of the Levitt-Cherokee Debtor's business within the meaning of any laws, rules or regulations relating to any tax, revenue, pension, benefit, ERISA, environmental, labor, employment, products liability or other law, rule or regulation of any federal, state or local government.

15. Upon Closing, this Order constitutes a full and complete general assignment, conveyance and transfer of the Assets and/or a deed or a bill of sale transferring good and marketable title in the Assets to Lifestyle on the Closing Date free and clear of all Claims. Each and every federal, state, and local governmental agency or department is directed to accept this Order as such an assignment, deed and/or bill of sale or any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement. This Order shall be accepted for recordation on or after the Closing

Date as conclusive evidence of the free and clear, unencumbered transfer of title to the Assets to Lifestyle.

16. This Order is effective as a determination that any and all Claims, if any, will be, and are, without further action by any person or entity, unconditionally released, discharged and terminated with respect to the Assets.

17. This Order is binding upon all entities that may be required to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to any of the Assets.

18. This Court retains exclusive jurisdiction to (a) enforce and implement the Purchase Agreement and any other agreements and instruments executed in connection with the Purchase Agreement, (b) compel delivery of possession of the Assets to Lifestyle, (c) resolve any disputes, controversies or claims arising out of or relating to the Purchase Agreement, and (d) interpret, implement and enforce the provisions of this Order.

19. The terms and provisions of the Purchase Agreement and this Order will be binding in all respects upon, and will inure to the benefit of, the Levitt Debtors, their estates, Lifestyle and its respective affiliates, successors and assigns, and any affected third parties, notwithstanding any subsequent appointment of any trustee under any chapter of the Bankruptcy Code, as to which trustee such terms and provisions likewise will be binding.

20. Except as expressly stated in the Purchase Agreement and this Order, all persons who hold Claims against the Levitt-Cherokee Debtor, insiders of the Levitt-Cherokee Debtor, or the Assets are forever estopped and permanently enjoined from asserting or prosecuting any claims or causes of action against Lifestyle, its affiliates, successors or assigns or any of their respective officers, directors, employees, attorneys or advisors, arising out of or in connection with the sale.

21. After the Closing Date, no person or entity, including, without limitation, any federal, state or local taxing authority, may (a) attach or perfect a lien or security interest against any of the Assets, or (b) collect or attempt to collect from Lifestyle, or any of its affiliates, any tax (or other amount alleged to be owing by one or more of the Levitt Debtors) (i) on account of or relating to any Claims or (ii) for any period commencing before and concluding prior to or on the Closing Date or any pre-Closing portion of any period commencing before the Closing Date and concluding after the Closing, or (iii) assessed prior to and payable after the Closing Date, except as otherwise provided in the Purchase Agreement. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to any of the transactions under the Purchase Agreement.

22. To the extent of any inconsistency between the provisions of any agreements, documents, or other instruments executed in connection with the

Purchase Agreement and this Order, the provisions contained in the Purchase Agreement will control.

23. Notwithstanding Fed. R. Bankr. P. 6004(h) and 6006(d), this Order will take effect immediately upon entry.

24. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

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Submitted by:

Allan E. Wulbern
Smith Hulsey & Busey
225 Water Street, Suite 1800
Jacksonville, FL 32202

Copies furnished to:

Allan E. Wulbern, who shall serve a copy of this order on all interested parties and file a certificate of service.

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