



SO ORDERED.

SIGNED this 16 day of February, 2012.

Stephani W. Humrickhouse
Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:)	
)	CASE NO.: 11-07370-8-SWH
SEA TRAIL CORPORATION,)	
Debtor)	CHAPTER 11
)	
)	

AGREED ORDER ALLOWING RELIEF FROM THE AUTOMATIC STAY AND ADEQUATE PROTECTION TO WACCAMAW BANK

This matter comes before the Court on the Motion for Relief from Automatic Stay or for Adequate Protection ("Stay Motion") filed by Waccamaw Bank ("Waccamaw") on January 16, 2012 [D.E. 174] and the Response in Opposition to the Stay Motion filed by the Debtor, Sea Trail Corporation ("Debtor") on February 2, 2012 [D.E. 200]. A hearing on the Stay Motion and other pending motions filed by the Debtor was scheduled for February 7 and 8, 2012, at which time counsel for Waccamaw, counsel for the Debtor, and counsel for the Unsecured Creditors' Committee, (Waccamaw, the Debtor, and the Unsecured Creditors' Committee hereinafter collectively referred to as the "Parties") announced to the Court that the Parties had reached a proposed resolution of the Stay Motion and other pending motions filed by the Debtor.

It appears to the Court that the terms and conditions recited by the Parties, which are set forth herein in detail, are reasonable and appropriate, are in the best interest of the bankruptcy estate and all creditors, and should be allowed and adopted as the Order of this Court. Therefore, based upon the Court's review of the record, the representations of the Parties, and the consent of the Parties, the Court finds and concludes as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157.

2. The Debtor filed its voluntary Chapter 11 bankruptcy petition on September 27, 2011. The case remains pending, no Trustee has been appointed, and no plan has been confirmed.

3. The Debtor is a North Carolina corporation organized in 1977, which operates the Sea Trail Golf Resort and Conference Center. The Debtor's business operations are comprised of three operating divisions, the golf division, the convention and resort division, and the real estate division.

4. Waccamaw is a secured creditor of the Debtor by virtue of two promissory notes secured by senior deed of trust liens on the great majority of the Debtor's real estate, including the golf courses, the convention center buildings, developed residential lots and the real estate held by the Debtor for future development purposes. In addition, the Debtor's obligations to Waccamaw are secured by a security interest in all "Rents," (defined as all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the real estate) received by the Debtor, which encompass all revenue derived by the Debtor from the use of its real estate. The above-referenced property subject to the liens and security interests of Waccamaw are collectively referred to as the "Collateral."

5. On October 4, 2011, Waccamaw filed its Proof of Claim (Claim No. 1) in the amount of \$15,880,408.04, such amount being the outstanding balance of the Debtor's obligation to Waccamaw as of the date the claim was filed ("Indebtedness").

6. At certain intervals in the case, the Parties have consented to the entry of interim orders authorizing the Debtor's limited use of funds which constitute "Rents" or are otherwise Waccamaw's cash collateral in accordance with specified terms and budgets ("Cash Collateral Orders").

7. On January 16, 2012, Waccamaw filed its Stay Motion and requested that the Court either lift the automatic stay to allow it to exercise its state law rights against its Collateral or provide adequate protection through the orderly and swift liquidation of the Collateral and the transition of ownership and management of the Debtor's assets.

8. On January 26, 2012, the Debtor filed its Plan of Reorganization ("Plan") and Disclosure Statement. In the Plan, the Debtor proposes to market and sell the Collateral.

9. The Debtor previously filed a Motion to Sell Free and Clear of Liens and a Motion to Establish a Procedure by which to sell certain of its real estate on November 10, 2011 [D.E. 74, 75]. Those motions and all objections relating thereto are resolved by the terms of this Order.

10. The Debtor acknowledges that it is not feasible for it to reorganize and continue its business. Instead, the Debtor acknowledges that it is necessary for it to liquidate its assets in an orderly fashion.

11. The Parties agree that it is in the best interests of the Parties, the bankruptcy estate, and all creditors for the Debtor's assets to be sold through a detailed, established procedure which calls for those assets to be properly and adequately marketed for sale by a professional with experience relating to golf and resort properties.

12. The Parties have agreed that, in order to facilitate the marketing and sale of the Debtor's assets, and to maximize the value of those assets for the benefit of the Parties, the bankruptcy estate, and all creditors, Waccamaw will agree to release from the lien of its Collateral certain items of its Collateral for the benefit of the Debtor and unsecured creditors (as further defined hereinbelow, the "Carve-Out Property"). In exchange for Waccamaw's release of its lien on the Carve-Out Property, Waccamaw will receive (a) the proceeds from the sale of all of its Collateral, including all of the Debtor's real property except the Carve-Out Property described below; and (b) the proceeds from the sale of all personal property belonging to the Debtor (whether or not said personal property constitutes Collateral), including but not limited to all trademark and service marks of the Debtor used in connection with its business, 173 sewer taps of the 353 sewer taps currently owned by the Debtor and issued by Brunswick County, together with all of the Debtor's rights, fees, or rights to the waiver of impact fees and capital recovery fees for 173 sewer taps (which rights may be set forth in the Sewer Service Agreement as defined in the Debtor's Disclosure Statement), and at the sole option of Waccamaw, all Debtor's rights as developer or Declarant under any development agreements, or any and all covenants, declarations, or bylaws related to, encumbering, or running with the property

generally known as Sea Trail Plantation (together, the “Waccamaw Property”), which sale proceeds from the Waccamaw Property shall be in full satisfaction of Waccamaw’s claims against the Debtor, subject to the terms and conditions set forth herein. The Carve-Out Property shall mean the following: that parcel identified as Tract 16 (19.53 acres), the 5 acre sewer facility, 180 sewer taps, the Sewer Service Agreement, which is subject to the rights of Waccamaw to assignment of the Debtor’s right to the waiver of impact fees and capital recovery fees for 173 sewer taps as set forth above, and 390 Magnolia Drive SW (or the net sales proceeds from the pending contract for sale for the gross sale price of \$35,000). Additionally, the Debtor and the Unsecured Creditors’ Committee agree to release Waccamaw from any and all claims that may exist up to the date of closing.

13. All rights of the Debtor under the existing Declaration and Covenants, including its rights as Declarant or developer under any and all declarations, covenants, conditions and restrictions filed in connection with Sea Trail Plantation, including rights under the bylaws of Sea Trail Plantation Master Association, Inc. (the “Master Association”), may be subject to the lien of Waccamaw and may, at the option of Waccamaw and/or prospective purchasers, be deemed Waccamaw Property and be transferred and assigned to one or more purchasers of the Waccamaw Property pursuant to the Sale Process or foreclosure. Debtor shall, at the request of Waccamaw, relinquish any and all rights as developer or Declarant under any declarations or covenants encumbering Sea Trail Plantation and convey all such rights to the purchaser or purchasers at the time requested by Waccamaw. Effective immediately, Debtor shall take no action as Declarant, developer, or property owner under any declarations or covenants or take any action by or through the Master Association related to the Real Estate Assets (as defined in the Debtor’s Disclosure Statement) or Sea Trail Plantation outside of the ordinary course of business without the prior written consent of Waccamaw.

14. All sales of any Waccamaw Property through the Sale Process shall include any and all rights, easements, permits, licenses, water and sewer rights, development rights, access rights, or such other rights or apperturances as determined now or in the future to be reasonably necessary for the use, enjoyment, and marketability of any portion of the Waccamaw Property.

15. The Waccamaw Property shall be sold free and clear of any liens or assessments asserted by the Master Association as a result of prior unpaid assessments while the Waccamaw Property or any part thereof was owned by Debtor.

16. The Debtor has agreed to fully cooperate with the sales procedure established for the sale of its assets.

17. The Debtor has agreed to amend its Plan to include the terms and conditions set forth herein and that, if the Debtor is unable to confirm a plan on or before April 30, 2012, the sale of the Debtor's assets pursuant to an established process shall nonetheless proceed pursuant to 11 U.S.C. § 363.

18. The Parties agree that Waccamaw lacks adequate protection of its interest in the Collateral, but that Waccamaw's interest in the Collateral will be adequately protected on an interim basis through the implementation of the following terms and conditions:

Section I: Development and Approval of Sales Process

a. A detailed process acceptable to Waccamaw for the marketing and sale of all of the Waccamaw Property, shall be developed ("Sales Process"), subject to the Court's approval.

b. Waccamaw shall have control over all aspects of the Sales Process and shall select a broker of its own choosing.

c. A joint Motion to Approve Broker shall be filed by February 17, 2012.

d. A joint Motion to Approve Sales Process and a Motion to Sell Property Free and Clear of Liens shall be filed by February 24, 2012.

e. The automatic stay shall immediately lift for the purpose of allowing the implementation of the Sales Process. No future bankruptcy filing by the Debtor shall stay or otherwise apply to the Sales Process, the sale of the Waccamaw Property, and/or any future foreclosure proceedings which may be instituted by Waccamaw relating to the Collateral and/or the Waccamaw Property. This provision is intended to grant to Waccamaw *in rem* relief against the Waccamaw Property and the Collateral.

f. If a plan consistent with the terms hereof has not been confirmed on or before April 30, 2012, the automatic stay shall lift on April 30, 2012 for all purposes, but at Waccamaw's sole discretion the Sales Process shall not be impaired. The sale of the Waccamaw Property through the Sales Process shall occur at Waccamaw's sole discretion pursuant to 11 U.S.C. § 363 regardless of whether the Debtor is able to confirm a plan of reorganization. In such case if Waccamaw chooses not to pursue the Sales Process after April 30, 2012, it may proceed with its foreclosure sale or other rights and remedies against the Waccamaw Property.

g. Subject to the terms and conditions set forth herein, all net sale proceeds from the sale of the Waccamaw Property shall be paid to Waccamaw.

h. Following the closing of the sale of all of the Waccamaw Property pursuant to the Sales Process, and the payment of all applicable proceeds to Waccamaw, Waccamaw shall waive any unsecured deficiency claim it may have, provided however, that Waccamaw shall not be required to waive any deficiency claim if a plan of reorganization is not confirmed and a sale is not closed pursuant to 11 U.S.C. § 363 and the Debtor's case is converted to a Chapter 7 liquidation.

i. The Parties waive the right to surcharge the Collateral or the Waccamaw Property or claim any reimbursement for any expenses incurred pursuant to 11 U.S.C. § 506(c), except for the professional fees charged by the broker engaged by the Debtor for the Sale Process and except for fees and costs associated with the CLO, but only as to the amount corresponding to the direct time and actual direct assistance provided by the CLO to the broker relating to the Sales Process.

Section II: Implementation of Sales Process

a. The Sales Process shall be implemented and begun as soon as possible.

b. Matt Smith and The Finley Group shall be appointed as Chief Liquidation Officer ("CLO") and shall be charged with the implementation of the Sales Process as developed by Waccamaw and approved by the Court. After consulting with and receiving express authority from Waccamaw, the CLO shall have authority to make decisions on behalf of the Debtor relating to and consistent with the Sales Process.

c. The interim Cash Collateral Orders shall remain in place on the existing terms throughout the duration of the Sales Process, but only in accordance with and subject to monthly budgets provided in advance by the Debtor (through the CLO) and approved in advance by Waccamaw.

d. The CLO shall prepare and provide to Waccamaw rolling financial budgets for the following 13 week period. Such rolling financial budgets shall compare actual and budgeted revenues and expenses. Such rolling financial budgets shall be updated monthly.

e. The Debtor shall assume or reject its existing leases subject to Waccamaw's direction, to be given in Waccamaw's sole discretion, until the Sales Process has been finalized. During the Sales Process, the Debtor shall keep current all of its existing leases which it intends to assume.

f. Waccamaw will not object to the Debtor's payment of professional fees approved by the Court so long as the Debtor has funds available to pay such professional fees only after full payment of all approved budgeted items.

Section III: Distributions to Unsecured Creditor Classes and the Master Association

a. The Carve-Out Properties shall not be sold under the Sales Process.

b. Following or contemporaneous with the closing of the sale of the last remaining item of the Waccamaw Property under the Sales Process (not including the Carve-Out Properties) and the payment of all applicable proceeds to Waccamaw, the Carve-Out Properties shall be released from the Waccamaw lien.

c. At such time as requested by Waccamaw, but in no event later than the date the last remaining item of Waccamaw Property is sold, the common areas and improvements thereon, roads, easements rights, and the four (4) beach lots located on Sunset Island, and all other related rights, licenses, or permits necessary for the operation of Sea Trail Plantation shall be conveyed to the Master Association free and clear of Waccamaw's liens, but subject to all Declarant and developer rights, the existing Declarations and Covenants as amended, and the customary reservation of rights for the benefit of the present and future owners of the Collateral, including the prohibition of sale or pledge of the common areas.

d. The Master Association shall continue to have reasonable access to the accounts, books, records and computer systems of the Debtor as it relates to the Master Association throughout the Sales Process.

Section IV: Miscellaneous Provisions

a. Quarterly fees (which the Parties estimate to be \$13,000) shall be paid from cash collateral or, in the event there is insufficient cash collateral, from the proceeds from the sale of the Waccamaw Property.

b. Waccamaw will not object to any party's request that testimony by any appraiser be placed under seal.

c. The Parties will honor the currently existing annual membership dues paid by the individuals for the privilege of using the facilities and golf courses at Sea Trail, on the terms and conditions as they now exist.

d. The Parties will honor membership certificates previously issued by the Debtor to individuals for the privilege of using the facilities and golf courses at Sea Trail, on the terms and conditions as they now exist.

WHEREFORE, based on the foregoing findings of fact and conclusions of law, with the consent of the parties, and in resolution of the Stay Motion and in resolution of the Debtor's Motion to Sell Free and Clear of Liens and Motion to Establish a Procedure, the Court hereby orders and directs:

1. That Waccamaw lacks adequate protection of its interest in the Collateral.
2. That Waccamaw's interest in the Collateral shall be adequately protected through the implementation of the terms and conditions specified in herein, which shall be binding on all of the Parties.

3. That the automatic stay is hereby lifted for the purpose of allowing the implementation of the terms and conditions specified herein, and this order shall not be stayed.

4. That any plan submitted by the Debtor for confirmation shall incorporate by reference the terms of this Order and shall be made subject to the terms of this Order.

5. That any plan confirmed by this Court shall incorporate by reference the terms and conditions of this Order and be made subject thereto.

6. That the terms of this order shall survive plan confirmation or conversion and be binding on any trustee appointed in this case.

7. That the Debtor's Motion to Sell Free and Clear of Liens and Motion to Establish a Procedure are hereby granted for the sole purpose of allowing the Debtor to proceed with the sale of the property known as 390 Magnolia Drive SW. The parties will agree on the entry of a separate free and clear order to facilitate this sale.

WE CONSENT:

/s/ Laurie B. Biggs

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