

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:)
)
TARTAN PINES DEVELOPMENT CO., INC.,) **BK Case No. 17-11565**
) **Chapter 11**
DEBTOR-IN-POSSESSION.)

MOTION TO APPOINT CHAPTER 11 TRUSTEE

Comes now TANFL, LLC (“Movant”) and moves unto this Court pursuant to 11 U.S.C. § 1104, United States Bankruptcy Code, for entry of an Order appointing a Chapter 11 Trustee for the Debtor. This Motion is based upon the best interests of the Estate, and for cause, loss or diminution of value of the Estate, gross mismanagement and failure to operate the business. In further support hereof, the Movant provides the Affidavit of William Carr, Managing Member of Movant.

BACKGROUND

Debtor filed its Chapter 11 Petition on or about August 15, 2017 [Doc. 1]. It filed its Schedules on or about September 1, 2017 [Doc. 28]. Movant is the holder of a Mortgage on all of the real property owned and identified by the Debtor, which previously constituted a golf course. Movant contends that the operation of a golf course on the land of the Debtor is mandated by case authority of both the Bankruptcy Court and State of Alabama. See *Heatherwood Holdings, LLC v. First Commercial Bank*, 631 So.3d 1012 (Ala. 2010); *In Re Heatherwood Holdings*, 746 F.3d 1206 (11th Cir. 2014).

Further, Movant filed its own Motion to Protect Collateral on October 25 [Doc. 42], which was granted pursuant to the Consent Order entered on November 21, 2017 [Doc. 53]. As identified in the Motion, the Debtor has ceased its operations and completely has failed to maintain the land

as a golf course in any fashion. Pursuant to the Consent Order, Movant was authorized to cut grass, seed, fertilize, and perform minor maintenance simply to upkeep the land which serves as collateral for the obligation owed by the Debtor to Movant.

As set forth in the Affidavit of Mr. Carr, attached hereto as Exhibit A, the Debtor, without the knowledge or consent of Movant or any Court authority, has removed a substantial portion of Hole #1, creating a berm on one side of the fairway. In so doing, grass has been removed, the fairway has been remodeled and restructured, the irrigation system has been destroyed, and no replacement grass has been provided. The Debtor, since inception of the case, has never cut the grass, worked upon any of the sand traps or related matters, fertilized and, as reflected herein, has not provided any new seeding either for ordinary fairways (which is required for any upkeep as a golf course) or for the dirt moved from one location to another. As set forth in Exhibit A, Movant contends that removal of a portion of the fairway, building the berm on one edge of the fairway, the failure to reseed, destruction of part of the irrigation system, or otherwise maintain the property constitutes a violation of its Mortgage and decreases the value of not only its collateral, but the single largest asset of the Debtor's Estate.

On November 6, 2017, Debtor filed its original Monthly Operating Report, reflecting gross income of only \$412 during the month of September. It reflected an obligation to Alabama Power Company totaling approximately \$800 that had not been paid. In the second Monthly Operating Report filed on November 30, 2017, the Debtor reflected absolutely no revenue or income, but did not show the obligation to Alabama Power Company even though no checks were reflected to identify payment of that obligation. The Debtor's bank account reflected a negative \$9.98. Somewhat similarly, the third Monthly Operating Report filed by the Debtor on December 27, 2017

again showed \$0 in revenue and, once again, did not reflect any payment of the Alabama Power Company identified obligation. Instead, it did reflect that \$3,000 had been paid in legal fees and the quarterly fee of \$325 had been paid, although no check to that effect was identified and no revenue from which such payments could be made was identified on any of the Monthly Operating Reports. Presumably, such funds were paid by a third party, but the Debtor never sought Court approval to borrow such funds or make such payment.

Moreover, the Monthly Operating Reports do not reflect any payment to the backhoe company which removed the dirt for Hole #1 identified hereinabove. It is believed that the company is named AmSher, but there has been no contract to employ that company which necessarily must be outside the ordinary operation of the Debtor's business, and no check from which such dirt removal could be paid. No funds exist to replace the grass removed.

And now, most recently, the Debtor appears to be actively pursuing a sale of 160 acres of the real estate which is the subject of the Mortgage described above. Upon information and belief, efforts to sell such real property are not limited to the use of such real estate as a golf course, as required by law, but, instead, would potentially include a 12-hole golf course and development of the balance of the real property. The two cases identified hereinabove would prohibit such contemplated sale or use, as the facts surrounding those two cases are quite close to the circumstances here. The subdivision adjacent to the golf course utilizes names associated with golf; purchasers of real property within the subdivision understood they were purchasing land adjacent to an active golf course and paid a larger sum of money for that concept and real estate development, and use of the property and real estate development contrary to that contemplated under such implied restrictive covenant is impermissible; hence, efforts to sell the property as now being undertaken by

the Debtor are contrary to the law and could reduce value of the land in the subdivision adjacent to the course - i.e. - cause damages to such landowners.

Movant asks this Court to take judicial notice of the Monthly Operating Reports identified hereinabove and filed with the Clerk by the Debtor. Movant further asks this Court to review the Affidavit of William Carr as attached hereto as Exhibit A, together with the exhibits thereto (photographs and land maps) reflecting the destruction of the real property, creation of a berm and the like, and marketing efforts for non-golf course use.

It is the contention of Movant that a Chapter 11 Trustee should be appointed pursuant to Section 1104, Bankruptcy Code. Movant contends that cause exists for the appointment of such Trustee based upon the incompetence or gross mismanagement of the affairs of the Debtor by current management after the commencement of the case. This is premised upon the allegations set forth hereinabove and incorporated within the Affidavit attached as Exhibit A. Further, Movant contends that the protection and operation of a business as a golf course, and protection of the collateral subject to the Mortgage of Movant, is in the best interest of all creditors and the Estate.

WHEREFORE PREMISES CONSIDERED, TANFL, LLC moves unto this Court for entry of an Order appointing a Chapter 11 Trustee to take over all operations of the Debtor in order to comply with the Bankruptcy Code. Stated simply, the Debtor has not operated itself as a business and there is no likelihood of such profitable operation while, instead, the Debtor destroys or otherwise diminishes the value of the collateral of Movant and the asset(s) of the Estate.


/s/ Lee R. Benton

Lee R. Benton (ASB-8421-E63L)

OF COUNSEL:


BENTON & CENTENO, LLP
2019 Third Avenue North
Birmingham, Alabama 35203
(205) 278-8000
(205) 278-3492 (Direct Fax)
email: lbenton@bcattys.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been electronically filed with the Court and served by electronic notice generated via the Court's ECF system and by first class mail to listed persons/entities on the attached Matrix, by depositing a copy of same in the United States mail, properly addressed, on this 9 day of Feb, 2018.

J. Kaz Espy
Espy, Metcalf & Espy, P.C.
Post Office Drawer 6504
Dothan, Alabama 36302

Teresa R. Jacobs
Bankruptcy Administrator
One Church Street, Suite 103
Montgomery, Alabama 36104


s/Lee R. Benton

Of Counsel

Label Matrix for local noticing
1127-1
Case 17-11565
Middle District of Alabama
Dothan
Fri Feb 9 10:17:40 CST 2018

Trinity Bank
306 South Main Street
Enterprise, AL 36330-3805

ALABAMA DEPT OF REVENUE
50 RIPLEY ST
MONTGOMERY, AL 36132-0001

BUFFALO ROCK
3775 NAPIER FIELD RD
DOTHAN, AL 36303-0918

COFFEE COUNTY COOP
1101 GENEVA HWY
ENTERPRISE, AL 36330-3183

EASY PICKER GOLF
415 LEONARD BLVD N
LEHIGH ACRES, FL 33971-6302

EUGENE YAGER
ASSIGNEE OF BILLY COTTER
161 ROSEMONT DR
ENTERPRISE, AL 36330-2384

JOEL MARSH
C/O COREY D BRYAN
119 E THREE NOTCH ST
ANDALUSIA AL 36420-3120

Jason Munn
218 Private Rd. 1409
Ozark, AL. 36360-7723

M&M TRUCKING
980 LEE RD 10
AUBURN, AL 36830-8180

TANFL, LLC, assignee of Trinity Bank
c/o Lee R. Benton
Benton & Centeno, LLP
2019 Third Avenue North
Birmingham, AL 35203-3301

U.S. Bankruptcy Court
One Church Street
Montgomery, AL 36104-4018

ALABAMA POWER COMPANY
600 NORTH 18TH STREET/BOX 17N-0043
BIRMINGHAM, AL 35203-2200

Bankruptcy Administrator
U. S. Bankruptcy Administrator
One Church Street
Montgomery, AL 36104-4018

CenturyTel of Southern Alabama
c/o Centurylink Communications, LLC- Ban
931 14th Street, Suite 900
Denver, CO 80202-2994

ENTERPRISE PAPER & JANITORIAL
300 AIRPORT RD
ENTERPRISE, AL 36330-1927

FRANCES W LOGELIN
1407 S LIVE OAK PKWY
WILMINGTON, NC 28403-4019

JOHN DEERE FINANCIAL
6400 NW 86TH ST
P O BOX 6600
JOHNSTON, IA 50131-6600

Jeremy R Holland
104 Azalea Drive
Enterprise, AL 36330-3714

MICHAEL R MCPADDEN
104 AZALEA DR
ENTERPRISE AL 36330-3714

Tartan Pines Development Co., Inc.
423 Tartan Way
Enterprise, AL 36330-2315

AIRGAS SOUTH INC
498 ROSS CLARK CR
DOTHAN, AL 36303-5836

ALABAMA POWER COMPANY
P O BOX 242
BIRMINGHAM, AL 35292-0001

CENTURYTEL
BANKRUPTCY DEPARTMENT
404 BROCK DR
BLOOMINGTON, IL 61701-2654

DUKE PEST CONTROL
350 CO RD 266
ENTERPRISE, AL 36330-7652

ENTERPRISE WATER WORKS BOARD
501 S MAIN ST
P O BOX 311000
ENTERPRISE, AL 36331-1000

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA, PA 19101-7346

JOSH PIPKIN ESQ
116 S MAIN ST
STE 304
ENTERPRISE, AL 36330-2556

KONE INC
311 HAVEN DR
DOTHAN, AL 36301

PHILLIP A THOMPSON ESQ
611 E GLENN AVE
AUBURN AL 36830-4402

PNC CART LEASE
ONE PNC PLAZA
249 FIFTH AVE
PITTSBURGH, PA 15222-2707

ROBERT BISHOP
16370 VICTORY LN
ANDALUSIA, AL 36421-5576

STATE OF ALABAMA
KELLEY GILLIKIN ESQ
PO BOX 320001
MONTGOMERY, AL 36132-0001

TANFL, LLC, as Assignee of Trinity Bank
c/o Lee R. Benton
Benton & Centeno, LLP
2019 Third Avenue North
Birmingham, Alabama 35203-3301

TRINITY BANK
306 S MAIN ST
ENTERPRISE, AL 36330-3805

US ATTORNEY
ATTN: TOMMIE B HARDWICK
P O BOX 197
MONTGOMERY, AL 36101-0197

US ATTORNEY GENERAL
US DEPT OF JUSTICE
950 PENNSYLVANIA AVE NW
WASHINGTON, DC 20530-0001

WILSON JOSEPH ROURKE MCPADDEN
104 AZALEA DR
ENTERPRISE AL 36330-3714

Collier H. Espy Jr.
Espy, Metcalf & Espy, P.C.
P.O. Drawer 6504
326 North Oates Street
Dothan, AL 36303-4511

J. Kaz Espy
Espy, Metcalf & Espy, P.C.
PO Drawer 6504
326 North Oates Street 36303
Dothan, AL 36303-4511

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)M&M TRUCKING CO
980 LEE ROAD 10
AUBURN AL 36830-8180

(d)Michael R McPadden
104 Azalea Dr
Enterprise, AL 36330-3714

(d)Wilson Joseph Rourke McPadden
104 Azalea Dr.
Enterprise, AL 36330-3714

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