

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION

IN RE:

CASE NO. 15-15729-LMI

ENCLAVE SHORES CONDOMINIUM
ASSOCIATION, INC.

CHAPTER 11 PROCEEDING

Debtor

DEBTOR'S DISCLOSURE STATEMENT

ENCLAVE SHORES CONDOMINIUM ASSOCIATION, INC. ("Debtor"), Debtor and debtor-in-possession herein, respectfully submits this Disclosure Statement ("Disclosure Statement") to all known holders of claims and interests in order to solicit acceptances or rejections of the Debtor's proposed Plan Of Reorganization ("Plan"):

DESCRIPTION OF DISCLOSURE STATEMENT

The purpose of this Disclosure Statement is to provide the creditors of the Debtor with adequate information to enable them to make an intelligent decision whether to vote to accept or reject the Plan that is put before them. The Plan is a document that contains the formal statement of what the various creditors and interested parties will receive, how they are to receive it, and what will become of the Debtor. If the Plan is confirmed by the Bankruptcy Court, it will become binding on the Debtor, creditors and interested parties.

Creditors have the right to reject or accept the Plan. A class of creditors accepts the Plan when creditors holding two-third ($2/3$) in dollar amount of claims in which such class and more than one-half ($1/2$) in number of claims in such class who actually cast their ballots have voted to accept the Plan. Therefore, the vote of the creditors is of great importance. Notwithstanding the aforementioned statement, the Plan as submitted by the Debtor does not contain any class of claims that

-2-

would be defined as “impaired”. As such, holders of allowed claims that are unimpaired, such as the Plan submitted here, are deemed to have accepted the Plan. In sum, the Debtor believes solicitation of ballots, and the casting of ballots, is not required in this case.

Accompanying this Disclosure Statement are the following materials:

1. A copy of the Plan.
2. The ballot for accepting or rejecting the Plan.
3. A copy of the Order that states (I) the day by which the ballots must be received in order to be counted, (ii) the date on which a hearing in the Bankruptcy Court on whether to confirm the Plan will be held, and (iii) other relevant information.

As stated in the accompanying Order (item 3), the Bankruptcy Court has scheduled a hearing on whether to confirm the Plan for _____, 2016 at ____ a.m. Creditors may attend this hearing, although attendance is not necessary. In order for a ballot to be counted it must be received by Clerk of the Bankruptcy Court, Southern District of Florida, C. Clyde Atkins US Courthouse, 301 North Miami Ave., Room 105, Miami, FL 33128, by the close of business on _____, 2016. This Disclosure Statement has been approved by the United States Bankruptcy Judge Laurel M. Isicoff as containing adequate information to enable creditors to make an intelligent decision whether to accept or reject the Plan, and it is the only authorized statement with respect to the Plan. Although this statement has been approved by the Bankruptcy Court, the approval does not mean that the Plan is recommended by the Bankruptcy Court. No official committee of general unsecured creditors has been appointed in this Chapter 11 case. Finally, as stated earlier, due to the structure of the Plan, which contains only unimpaired classes of claims, there is no need or requirement for creditors holding allowed claims in this case to cast a ballot. These creditors are deemed to have accepted the Plan.

What follows is a brief description of the Debtor, both before and during the bankruptcy

-3-

case, a description and an analysis of the Plan, including the projected timing and the payment to creditors, and finally an analysis of the alternatives to the Plan. No other representations concerning the Debtor, or the Plan have been authorized by the Debtor and none should be relied upon by creditors in deciding how to vote.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO ANY MATTER COVERED BY THIS DISCLOSURE STATEMENT. NO REPRESENTATIONS CONCERNING THE DEBTOR, ITS OPERATIONS OR THE VALUE OF ITS PROPERTY IS AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OTHER THAN AS CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR AND TO THE OFFICE OF THE UNITED STATES TRUSTEE, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE DEEMED NECESSARY AND APPROPRIATE.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN MADE SUBJECT TO A CERTIFIED AUDIT. APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT BY THE COURT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN.

TO THE EXTENT THAT THERE IS AN INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS AND LANGUAGE OF THE PLAN SHALL CONTROL.

II. GENERAL BACKGROUND INFORMATION ABOUT THE DEBTOR

The Debtor was incorporated in August, 2001. The Debtor is the condominium association for a 27 residential unit project called Enclave Shores Condominium, with an address of 3755 N.E. 167th Street, North Miami Beach, Florida 33160 ("Premises").

Sometime in the year 2008, there was an electrical fire at the Premises, which started in the electric room. This fire caused extensive damage to the foundation of the Premises, causing, among other things, cracks and deterioration in the cement foundation. In addition, the fire caused a complete shutdown of the electrical power supply to the individual units, as well as the common areas located on the Premises.

-4-

As a result of the extensive damage caused by this fire, as well as the safety concerns, the Premises has been vacated and has been closed since immediately after the fire.

Once the building was closed, coupled with the financial downturn that started in late 2008, many unit owners stopped paying their maintenance fees. Many of these units owners also stopped paying the mortgage holders who held liens on the individual units. Although foreclosure actions were commenced by the banks, the banks were in no hurry to complete the foreclosures, which may lead the banks to be potentially responsible for the maintenance fees. These factors caused a huge financial strain on the ability of the Debtor to move forward and repair the property.

As market conditions began to improve, the Debtor sought to take the necessary steps to repair the building. Prior to the commencement of this Chapter 11 bankruptcy case, the Debtor entered into a Compliance Agreement with the City of North Miami Beach ("City"), dated on or about March 23, 2015 ("Compliance Agreement"). A true copy of the Compliance Agreement has been previously filed with this Court (CP# 34).

Shortly after the execution of the Compliance Agreement, on or about March 30, 2015, the Debtor commenced this Chapter 11 case.

The Compliance Agreement provides, *inter alia*, for a framework in which the damages to the Premises caused by the fire would be repaired, with the ultimate goal that the Premises would be declared safe by the City, any assessed violations against the Premises would be lifted, and the Premises would then be re-opened as a residential community and project.

The Compliance Agreement provides that the substantial completion of the reparation work must occur within 12 months from the issuance of the master permit. See, Compliance Agreement at section 3(vii). As a result, there is a short window provided to the Debtor to move forward with this reparation project.

-5-

The Compliance Agreement at section 3(ii) provides that construction plans for the reparation project shall be submitted to the building department within 90 calendar days from the effective date of this agreement. Subsequent to the commencement of this case, the construction plans, with certain modifications and adjustments, had been submitted and approved by the requisite governmental agencies or departments.

Upon the approval of the plans, the Debtor sought to retain a general contractor to handle the overseeing and actual construction work to be completed in accordance with the approved construction plans ("Project"). The Debtor acquired Court approval to retain the services of Bennet D. Gamel ("Gamel") of Quality First Homes Construction LLC (collectively referred to as "Contractor") to act as general contractor for the Project. Contractor is handling the entire construction process of the Premises, including but not limited to retaining and managing the sub-contractors and overseeing the work performance. Contractor has extensive experience in construction projects such as the current one.

The Debtor had been receiving bids for the many construction projects that will need to be fulfilled during the Project. As bids had been preliminarily approved by the Debtor, a construction budget ("Budget"), has been created by the Debtor, and approved by the Court. The total expected costs to complete the Project, as per the Budget is \$670,920.24. The Debtor believes the Budget represents a comprehensive and conservative estimate of the expenses that will be faced by the Debtor during the Project. Prior to the commencement of this chapter 11 case, the Debtor had approved a special assessment of a total of \$500,000.00 for the Project ("Prior Resolution"). That Prior Resolution was based on bids that were not as comprehensive as the current bids and as reflected in the Budget. Further, the Prior Resolution was not based on the final approved plans for the Project. The Debtor believes the Budget represents the more accurate costs of finishing the

-6-

Project.¹

The Debtor is well on its way to completing the Project. As of the current writing of this Disclosure Statement, the electrical work is complete, pending final inspection. The concrete and plumbing work are complete, with permits closed out. The seawall restoration is complete, and passed inspection. All first floor exterior metal doors have been repaired/replaced, and passed inspection. These are just a few examples of the tremendous progress the Debtor has accomplished in completing the Project, all with an eye towards the Premises being reopened.

III. DESCRIPTION OF THE PLAN

THE FOLLOWING IS A SUMMARY OF THE PROVISIONS OF THE PLAN AND, ACCORDINGLY, IT IS NOT AS COMPLETE AS THE FULL TEXT OF THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT AS AN EXHIBIT. THE PLAN ITSELF SHOULD BE READ IN ITS ENTIRETY. THE PLAN, IF CONFIRMED, IS A LEGALLY BINDING ARRANGEMENT AND SHOULD BE READ IN ITS ENTIRETY, AS OPPOSED TO RELYING ON THE SUMMARY HEREIN. ACCORDINGLY, CREDITORS MAY WISH TO CONSULT WITH THEIR OWN LAWYER TO UNDERSTAND THE PLAN MORE FULLY. THE SOURCE OF THE INFORMATION CONTAINED IN THE PLAN AND DISCLOSURE STATEMENT IS THE DEBTOR'S BOOKS AND RECORDS, AND PLEADINGS FILED IN THIS CASE.

The Plan contemplates that funding for the distribution to the only general unsecured creditor holding an allowed claim in this case, in the total amount of \$2,500.00, will be funded by the operations of the Debtor through collections of maintenance fees from unit owners.

There are essentially only two creditors in this Chapter 11 case that need to be addressed through the Plan. Class 1 consists of the Allowed Secured Claim of City of North Miami Beach,

^{1/} Notwithstanding the breadth of the Budget, the Debtor expected that the Budget may have to be amended concerning three specific construction items. While estimates for the reparation work on the seawall, elevators and pool were contained in the Budget and were based on industry expected standards, these items remained out for bids. Further, the damage to the seawall, elevators and pool may be more extensive than originally thought.

-7-

Florida.

The Debtor will continue to remain in compliance with the Compliance Agreement with the City of North Miami Beach ("City"). The Debtor will continue to complete the construction project that will result in the fines and violations being lifted by the City of North Miami Beach, and the Project will be reopened. Attached to the Plan and made a part thereof, is a letter from the Assistant City Attorney for the City of North Miami Beach that indicates that "all violations, fines and liens will be satisfied, discharged, released and dismissed upon completion of the requirements delineated by the [Compliance Agreement]. Class 1 will retain any liens it may have had pending compliance with the Compliance Agreement, until such time as the Project reopens. Class 1 is unimpaired under the Plan.

Class 2 consists of all Unsecured Claims. Upon the Effective Date of the Plan, the Debtor will cause payment representing a 100% distribution to the holders of Allowed General Unsecured Claims. There exists only one creditor that holds an Allowed General Unsecured Claim, namely Elliot W. Rifkin, P.A., which holds an Allowed General Unsecured Claim in the amount of \$2,500.00. This creditor has agreed to waive any interest that may otherwise be due on its claim. Since this class is receiving full payment on its claim, this class is unimpaired.

All administrative expenses as incurred by the professionals retained in this Chapter 11 Bankruptcy proceeding are subject to Bankruptcy Court approval upon proper application and notice to creditors. To the extent that same are allowed by the bankruptcy Court, the Debtor shall pay these expenses, in full, in cash, on the later of the Effective Date of the Plan, three (3) days after such claim is allowed, or within such terms and conditions as may be agreed upon between the Debtor

-8-

and each such creditors. To the extent that the Debtor's cash is insufficient to pay the allowed professional fees and costs, then the Debtor shall seek a special assessment from unit owners to cover the payment. All other administrative expenses shall be paid by the Debtor in full, in cash, on the Effective Date of the Plan or upon such terms and conditions as may be agreed upon by said creditors and the Debtor.

Notwithstanding any other provisions of the Plan to the contrary, the Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6), within ten (10) days of the entry of the order confirming this Plan, for pre-confirmation periods. The Debtor is required, and will continue to be required, to file with the Court monthly operating reports disclosing any pre-confirmation receipts and disbursements. The reorganized Debtor shall remain responsible for compliance with applicable reporting requirements of the Office of the United States Trustee, which require the Debtor to file with the Court on a quarterly basis, post-confirmation, operating reports that disclose any post-confirmation receipts and disbursements. The reorganized Debtor shall timely make payment to the United States Trustee of quarterly fees due and payable pursuant to 28 U.S.C. §1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. §1930(a)(6) after the Effective Date and until the Chapter 11 Case is closed based on disbursements made by the Debtor.

Bankruptcy Court approval will be necessary for allowance of the administrative professional expenses upon formal application of the professional and prior to any disbursement by the Debtor. However, for purposes of this Disclosure Statement, the following are the known holders of administrative expenses, and the estimated amounts of such unpaid and yet to be awarded expenses:

-9-

Behar, Gutt & Glazer, P.A., attorneys for the Debtor	Approx. \$140,000.00
Garcia, Espinosa, Miyares & Company accountants for the Debtor.....	Approx. \$25,000.00
Fees to the Office of the U.S. Trustee pursuant to 28 U.S.C. 1930	Approx. \$1,500.00
Estimated Administrative Expenses for Professionals and U.S. Trustee .	Approx. \$180,000.00

All other claimants holding claims for expenses of administration pursuant to §§503(b) and 507(A)(1) of the Code will be paid by the Debtor, in full, in cash, on the Effective Date of the Plan, or as agreed upon between the individual claimants and the Debtor.

Certain claims held by taxing authorities are entitled to priority in payment pursuant to §507 of the Bankruptcy Code. These claims were incurred prior to the commencement of this proceeding. The Debtor believes that there is no such priority tax claimant.

Class One and Class Two treatment has been described above.

The Class three claimants consists of all holders of record of equity interest in the Debtor. Class 3 shall receive no Distributions on account of their Interests. This Class 3 is comprised of all unit owners of units in the Project. By virtue of such ownership, each unit owner becomes a member of the Debtor. All pre-petition ownership interests in the Debtor shall be remain, subject to any foreclosures or voluntary transfers of those interests, in accordance with the recorded Declaration of Condominium for the Debtor, and applicable Florida State law. Class 3 is unimpaired under the Plan.

The Plan provides that all the classes are unimpaired and are therefore deemed to have

-10-

accepted the Plan. Generally speaking, a class of claims is "impaired" if the Plan alters the legal, equitable or contractual rights of the claims within the class. If a class is not receiving full payment it is impaired.

The Plan also includes provisions relating to the assumption of all present executory contracts of the Debtor. In addition, the Plan includes provisions for the bankruptcy court jurisdiction retention.

THE FOREGOING SUMMARY OF TO THE PLAN ONLY HIGHLIGHTS CERTAIN SUBSTANTIVE PROVISIONS OF TO THE PLAN, AND IT IS NOT NOR IS IT INTENDED TO BE A COMPLETE DESCRIPTION OF OR SUBSTITUTE FOR A FULL AND COMPLETE READING OF TO THE PLAN. ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS ARE URGED TO READ TO THE PLAN CAREFULLY IN ITS ENTIRETY FOR A COMPLETE DESCRIPTION OF ITS PROVISIONS FOR VOTING TO ACCEPT OR REJECT TO THE PLAN.

IV.

ADDITIONAL RELEVANT INFORMATION

A. SOURCE OF MONIES TO BE PROVIDED TO FUND TO THE PLAN

The Plan contemplates that funding the distributions set forth in the Plan will be derived from the operations of the Debtor's business.

B. PREFERENCE OR FRAUDULENT TRANSFER RECOVERIES & OTHER LITIGATION

After a review of the Debtor's books and records, the Debtor does not believe that there are any actions that could or should be brought to recover preferential transfers or fraudulent transfers.

The Debtor does not foresee litigation that the Debtor will be a party.

C. EXECUTORY CONTRACTS

There does not exist any executory contracts that have not been formally previously assumed or rejected. To the extent that said executory contracts do in fact exist, than such contracts are

-11-

deemed rejected, and any damage claim arising from such rejection will be treated as a Class two claim.

D. POST-CONFIRMATION DEBTOR OPERATIONS

As stated above, the Debtor contemplates that the Debtor will continue its operations after confirmation of the Plan.

Recently, the acting president of the Debtor, LeRoy Goldstein passed away. It is intended that the management of the Debtor will continue to be operated by Pamela Gray, as president and director, Oren Hon, as director; and Loren Baum, as director. They will serve as such and there will be no compensation for such services.

E. THIRD PARTY BAR ORDER

The Plan provides for what is known as a third party bar order. The Bar Order language of the Plan is set forth here:

Prior to the commencement of the Debtor's Chapter 11 case, the Board of Directors, was constituted at the time by LeRoy Goldstein, as president; Armando Ghedini, as director and Pamela Gray as director (the "First Board"). The First Board, after reviewing the financial and other records of the Debtor, claims of the City of North Miami Beach, and the issues surrounding the Project closing, determined it was in the best interests of the Debtor to seek bankruptcy protection under Chapter 11. The First Board commenced this Chapter 11. Subsequently and during the pendency of this Chapter 11, the members of the Board of Directors changed to LeRoy Goldstein, as president; Pamela Gray, as director and Loren Baum as director (the "Second Board"). The Second Board has continued to act through the Chapter 11, including but not limited to authorizing the filing this Plan.

Upon the Effective Date of the Plan, any and all claims that any past or present unit owners of the Project have, or may have against any Board member, including but not limited to the First Board and/or the Second Board, and their attorneys, agents, employees, for alleged damages caused by the decision to file Chapter 11 for the Debtor, or for any act committed with respect to, or relating to, or during the Chapter

-12-

11 of the Debtor, are waived, discharged and otherwise barred.
(hereinafter referred to as the "Bar Order")

Bankruptcy Courts have authority to enter bar orders, that would prevent claims against third parties that are themselves not debtors in a bankruptcy case, and are not offering any direct consideration for such protection from suit. In order to approve such a bar order as the one contained in the Plan, the Court must determine if the Bar Order is integral to the settlement, or in this case the Plan. The Debtor would state that the Bar Order is essential to the Plan. The Debtor, as a business entity, can only act through its Board of Directors. It is submitted that the decision to commence the chapter 11, and all the steps taken to proceed through the Chapter 11, were accomplished by the First Board and the Second Board- all with the best interests of the creditors, the Debtor and this estate, in mind. No compensation for this work was received or sought by the First Board and Second Board. The First Board and Second Board would not have taken on this task of overseeing the chapter 11, if they knew they could be sued for doing so.

The Court must then determine if the Bar Order is fair and equitable. The Bar Order is limited in scope. It only bars claims against the First Board and the Second Board for claims for alleged damages caused by the decision to file Chapter 11 for the Debtor, or for any act committed with respect to, or relating to, or during the Chapter 11 of the Debtor. Without the Bar Order, should the First Board or the Second Board get sued for matters related to this chapter 11, no doubt the respective Board would seek indemnification from the Debtor. This would cause the Debtor to suffer depletion of assets, which the Debtor in turn would assess against the unit owners. Based on these limitations, the Debtor believes the Bar Order is fair and equitable.

F. ALTERNATIVES TO THE PROPOSED PLAN

Because there are no impaired creditors that need to be treated through the Plan, the Debtor

-13-

does not believe disclosure of alternatives to the PLAN is necessary or required under these circumstances.

G. INSIDER CLAIMS

There are no insider claims.

H. There does not exist any present or proposed material transactions of the Debtor in which any "INSIDER" or "AFFILIATE" of the Debtor may have or will have any interest, except for what it is specifically described herein.

V.

RETENTION OF JURISDICTION

The Bankruptcy Court shall retain exclusive jurisdiction of the Chapter 11 cases in all matters arising thereunder and therefrom to ensure that the purpose and intent of the Plan are carried out, and for the following additional purposes:

1. to consider any modification of the Plan under §1127 of the Bankruptcy Code, and/or any modification of the Plan prior to substantial consummation as defined in §1101(2) of the Bankruptcy Code;
2. to hear and determine all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of the Plan;
3. to determine all matters which may be pending on the confirmation date;
4. to hear and determine all requests for compensation and/or reimbursement of expenses which may be made after the confirmation date;
5. to hear and determine all objections to claims, controversies, suits and disputes that may be pending at or initiated after the confirmation date, except as provided in the Confirmation Order.
6. to consider an act on the compromise or settlement of any claims against or causes of action on behalf of the Debtor's estate;
7. to consider an act on such other matters consistent with the Plan in an aid of its

-14-

implementation; and

8. to issue such Orders that are or maybe necessary or appropriate for the consummation of the Plan.
9. to enable the Debtor to carry out the provisions of the Plan, including the prosecution and resolution of objections to claims and
10. to enter a final decree closing the Chapter 11 case.

CONCLUSION

To the extent that any creditor has the right to vote, the Debtor urges such creditors to vote to accept the Plan and to evidence such acceptance by returning their ballots. Here again, the Debtor believes all allowed holders of claims are deemed to have accepted the Plan.

DATED at Ft. Lauderdale, Florida, this 22 day of July, 2016.

BEHAR, GUTT & GLAZER, P.A.
Attorneys for Debtor
DCOTA, Suite A-350
1855 Griffin Road
Ft. Lauderdale, Florida 33004
Telephone: (305) 931-3771
Fax: (305) 931-3774

By: 

BRIAN S. BEHAR
FBN: 727131

ENCLAVE SHORES CONDOMINIUM ASSOCIATION, INC.

By: 

Its: President / Director