

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CCHG Liquidation Co.,

Debtor

CHAPTER 11

Case No. 12-01220

Substantively Consolidated

**Katie S. Goodman, solely in her capacity as the
Liquidation Trustee for CCHG Liquidation Co.,**

Movant,

CONTESTED MATTER

v.

**James B. Anthony, Timothy P. Cherry, and
David McAda,**

Respondents.

**MOTION OF KATIE S. GOODMAN, SOLELY IN HER CAPACITY AS THE
LIQUIDATION TRUSTEE FOR CCHG LIQUIDATION CO., FOR AN ORDER
PURSUANT TO FED. R. BANKR. P. 2004**

COMES NOW Katie S. Goodman, solely in her capacity as the Liquidation Trustee for CCHG Liquidation Co. (the "Liquidation Trustee"), and files this Motion for an Order Pursuant to Fed. R. Bankr. P. 2004, respectfully showing the Court the following:

1. On February 28, 2012 (the "Petition Date"), The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors¹ filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

¹ The debtors (now substantively consolidated as a single debtor), followed by the last four digits of their respective taxpayer identification numbers and chapter 11 case numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. n/k/a CCHG Liquidation Co. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC n/k/a CCHG Liquidation Co. II, LLC (2842) (12-01225);

2. On July 2, 2012, the debtors filed the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor dated June 30, 2012, as amended [Docket Entry No. 616, Ex. A] (the “Plan”),² as well as the First Amended and Restated Disclosure Statement to Accompany the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor [Docket Entry No. 480] (the “Disclosure Statement”).

3. On August 17, 2012, this Court entered that certain Order Confirming First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor (the “Confirmation Order”).

4. On August 31, 2012, the debtors filed that certain Notice of Occurrence of Effective Date of Chapter 11 Plan; Limitation of Notice; and Related Matters, reflecting that the Effective Date of the Plan occurred on August 23, 2012.

5. The Plan provided for the creation of a liquidating trust (the “Liquidating Trust”) for the benefit of certain classes of creditors of the debtors, and the Liquidation Trustee was appointed as the trustee of the Liquidating Trust. Under the Plan, the debtors assigned to the Liquidating Trust certain Retained Actions. Among other things, the Plan provides:

Causes of Action Retained by Debtors or Assigned to the Liquidating Trust. From and after the Effective Date, because the Debtors will have assigned the Retained Actions to the Liquidating Trust, the Liquidation Trustee will have the right to prosecute any avoidance, equitable subordination or recovery Cause of Action arising under Sections 105, 502(d), 510, 542-551, and 553 of the Bankruptcy Code that belonged to any of the Debtors as of the Effective Date and has not been expressly compromised, settled, or released pursuant to the

The Cliffs at Keowee Vineyards Golf & Country Club, LLC n/k/a CCHG Liquidation Co. III, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IV, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC n/k/a CCHG Liquidation Co. V, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VI, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VII, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VIII, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IX, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC n/k/a CCHG Liquidation Co. X, LLC (9665) (12-01237).

² Capitalized terms not defined herein shall have the meaning ascribed thereto in the Plan.

Plan or an order of the Bankruptcy Court entered prior to the Confirmation Date. Except for any Cause of Action that has been expressly compromised, settled, or released pursuant to the Plan or an order of the Bankruptcy Court entered prior to the Confirmation Date, nothing contained in the Plan or the Confirmation Order will be deemed to be a waiver or relinquishment of any right or Cause of Action that the Debtors or the Liquidating Trustee may have, or which the Liquidating Trustee may choose to assert on behalf of the Liquidating Trust beneficiaries pursuant to any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation (a) any claim against any person or entity, to the extent that such person or entity asserts a cross-claim, counterclaim, and/or Claim for setoff seeking affirmative relief against the Debtors, or their officers, directors, or representatives; (b) the turnover of any property of the Estates; and (c) Causes of Action against current or former directors, shareholder, officers, professionals, and other persons relating to acts or omissions occurring on or prior to the Petition Date.

6. As set forth in the Plan Supplement to the Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor [Docket Entry No. 470], the debtors' books and records reflect that Mr. James B. Anthony owes the debtors the sum of at least \$6,407,138 pursuant to certain notes and loan obligations. Pursuant to the Plan, the Liquidation Trustee has the authority to pursue a cause of action against Mr. Anthony to recover these sums owing to the debtors, for the benefit of certain beneficiaries of the Liquidating Trust.

7. Rule 2004(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that "on motion of any party in interest, the court may order the examination of any entity." Pursuant to Rule 2004(b):

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

8. In addition, under Bankruptcy Rule 2004:

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

9. The Liquidation Trustee seeks to conduct examinations of Mr. Anthony, Mr. Timothy P. Cherry (the debtors' former Chief Financial Officer), and Mr. David McAda (the debtors' former controller) (collectively, Mr. Anthony, Mr. Cherry, and Mr. McAda, the "Respondents") to inquire into the facts and circumstances surrounding the sums that Mr. Anthony owes to the debtors, as well as any other matter relevant to the debtors' cases. As such, the Liquidation Trustee respectfully requests that the Court enter an order authorizing the Liquidation Trustee to take examinations of the Respondents pursuant to Bankruptcy Rule 2004.

10. The Liquidation Trustee requests that the examinations take place at the law offices of Däna Wilkinson, 365-C East Blackstock Road, Spartanburg, SC 29301 beginning at 10:00 a.m. on January 7, 2014, or at such other time and place as each of the Respondents and the Liquidation Trustee may agree, and that the examination continue from day to day until completed.

11. The Liquidation Trustee further requests that the Court order the Respondents to produce and permit inspection of any and all documents constituting, recording, reflecting, evidencing, relating or pertaining in any way to sums owing by Mr. Anthony to one or more of the debtors, specifically including any communications (electronic or otherwise) regarding sums owing by Mr. Anthony to one or more of the debtors.

12. The Liquidation Trustee asserts that good cause exists for the entry of an order granting the requested examinations pursuant to Bankruptcy Rule 2004 and the production of the documents set forth above.

13. A proposed order on this motion is attached hereto as Exhibit A.

WHEREFORE, the Liquidation Trustee respectfully requests the Court to issue an order, pursuant to Bankruptcy Rule 2004: (1) granting the Liquidation Trustee the authority to take the examinations of the Respondents, commencing on January 7, 2014; and (2) ordering the Respondents to produce to undersigned counsel and permit inspection of the documents set forth above not later than seven (7) business days prior to the date of such examinations.

This 26th day of November, 2013.

McKENNA LONG & ALDRIDGE LLP

/s/ Gary W. Marsh

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Attorneys for the Liquidation Trustee

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

Case No. 12-01220

**ORDER GRANTING MOTION OF KATIE S. GOODMAN, SOLELY IN HER
CAPACITY AS THE LIQUIDATION TRUSTEE FOR CCHG LIQUIDATION CO.,
FOR AN ORDER PURSUANT TO FED. R. BANKR. P. 2004**

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

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CONTESTED MATTER

**ORDER GRANTING MOTION OF KATIE S. GOODMAN, SOLELY IN HER
CAPACITY AS THE LIQUIDATION TRUSTEE FOR CCHG LIQUIDATION CO.,
FOR AN ORDER PURSUANT TO FED. R. BANKR. P. 2004**

On November 26, 2013, Katie S. Goodman, solely in her capacity as the Liquidation Trustee for CCHG Liquidation Co. (the "Liquidation Trustee") filed a Motion [Docket No. ____] for an Order Pursuant to Fed. R. Bankr. P. 2004 (the "Motion"). In the Motion, the Liquidation Trustee requested an Order:

(1) granting the Liquidation Trustee authority to take examinations pursuant to Fed. R. Bankr. P. 2004 of Mr. James B. Anthony, Mr. Timothy P. Cherry, and Mr. David McAda (collectively, the "Respondents"), to commence on January 7, 2014 and to continue thereafter until completed; and

(2) ordering the Respondents, not less than seven (7) business days prior to the date of such examinations, to produce to the Liquidation Trustee's counsel and permit inspection and copying of any and all documents constituting, recording, reflecting, evidencing, relating or pertaining in any way to sums owing by Mr. Anthony to one or more of the debtors, specifically including any communications (electronic or otherwise) regarding sums owing by Mr. Anthony to one or more of the debtors; and

(3) and for such other and further relief as is just and proper. Accordingly, it is hereby

ORDERED, that the Motion is granted. It is further

ORDERED, that the Liquidation Trustee is hereby authorized to conduct the examinations of the Respondents, pursuant to Bankruptcy Rule 2004, to commence on January 7, 2014 unless otherwise agreed by the parties. It is further

ORDERED, the Respondents shall, not less than seven (7) business days prior to the date of such examinations, produce to the Liquidation Trustee's counsel and permit inspection and copying of any and all documents constituting, recording, reflecting, evidencing, relating or pertaining in any way to sums owing by Mr. Anthony to one or more of the debtors, specifically including any communications (electronic or otherwise) regarding sums owing by Mr. Anthony to one or more of the debtors.

AND IT IS SO ORDERED.

PREPARED AND PRESENTED BY:

/s/ Däna Wilkinson
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-and-

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