

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:) Case No. 12-01220
)
THE CLIFFS CLUB & HOSPITALITY) Chapter 11
GROUP, INC., et al., d/b/a The Cliffs Golf)
& Country Club) Jointly Administered

Debtors.

**RESPONSE AND LIMITED OBJECTION TO
DISCLOSURE STATEMENT TO ACCOMPANY JOINT CHAPTER 11 PLAN FILED
BY THE DEBTOR AND PLAN SPONSOR**

NOW COMES TCF EQUIPMENT FINANCE, INC., by and through counsel, and hereby files this Response and Limited Objection to the proposed Disclosure Statement to Accompany Joint Chapter 11 Plan filed by The Cliffs Club & Hospitality Group, et al. (collectively the “Debtors”)¹ and the Plan Sponsor pursuant to 11 USC §§1125 and Bankruptcy Rules 3018(a) and 9014. In support of its Response and Limited Objection, TCF respectfully shows unto the Court as follows:

JURISDICTION AND BACKGROUND

1. The Court has jurisdiction over the parties and subject matter of these proceedings pursuant to 28 U.S.C. §§ 1334, 151 and 157.
2. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. § 1409.
3. On February 28, 2012 (“Petition Date”), each of the Debtors filed a voluntary petition for relief in this Court under Chapter 11 of the United States Bankruptcy Code

¹ The Debtors, 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. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); the Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC (9665) (12-01337).

(“Bankruptcy Code”). Pursuant to §§ 1107 and 1008, Debtors are authorized to operate their businesses as debtors-in-possession.

4. This Court has entered an order allowing joint administration of the Debtors.

5. On May 22, 2012, the Debtors filed a proposed Disclosure Statement to Accompany the Chapter 11 Plan of Debtors (“Disclosure Statement”).

6. Prior to the Petition Date, TCF through its division VGM Financial Services (collectively “TCF”) and various Debtors entered into a number of lease agreements (collectively “Leases”) as follows:

- (a) Prior to the Petition Date, TCF and Debtor The Cliffs Valley Golf & Country Club, LLC (“Cliffs Valley”) entered into a Master Lease Agreement bearing account number ending in 6207 dated July 27, 2010 and a Master Lease Agreement dated January 7, 2011 (collectively “Cliffs Valley Leases”). Both Cliffs Valley Leases and various schedules to the Cliffs Valley Leases provide for the lease of turf and irrigation equipment. TCF filed a UCC Financing Statement with the South Carolina Secretary of State on January 28, 2011 and also filed a UCC Financing Statement on August 3, 2010 reflecting its interest in the equipment under the Cliffs Valley Leases. On May 31, 2012, TCF timely filed its proof of claim with respect to the Cliffs Valley Leases. Cliffs Valley Debtor was in default under the Cliffs Valley Leases for payments due prior to the bankruptcy filing of Debtor Cliffs Valley and is in default for post-petition amounts due TCF. The cure amount due to TCF for the Cliffs Valley Leases is \$31,548.13.
- (b) Prior to the Petition Date, TCF and Debtor The Cliffs at Keowee Falls Golf Country Club, LLC (“Keowee Falls”) entered into a Master Lease Agreement bearing account number ending in 6215 dated July 27, 2010 for the lease of certain turf and irrigation equipment (“Keowee Falls Lease”). Subsequently, the Debtor Keowee Falls entered into various equipment schedules for additional equipment. On August 3, 2010, TCF filed two UCC Financing Statements properly perfecting its security interest in the equipment under the Keowee Falls Lease. On May 31, 2012, TCF timely filed its proof of claim with respect to the Keowee Falls Lease. Debtor Keowee Falls was in default under the Keowee Falls Lease for payments due prior to the Debtor’s bankruptcy filing and is in default for post-petition amounts due TCF. The cure amount due to TCF for the Keowee Falls Lease is \$14,930.14.
- (c) Prior to the Petition Date, TCF and the Debtor The Cliffs at Glassy Golf and Country Club, LLC (“Glassy”) entered into a Master Lease

Agreement bearing account number ending in 6221 dated July 27, 2010 for the lease of certain turf and irrigation equipment described in Exhibit A (“Glassy Lease”). Debtor Glassy subsequently entered into various schedules for the lease of additional turf and irrigation equipment from TCF under the Glassy Lease. TCF promptly perfected its interest in the Glassy equipment by filing two UCC Financing Statements on August 3, 2010 with the South Carolina Secretary of State. On May 31, 2012, TCF timely filed its proof of claim with respect to the Glassy Lease. Debtor Glassy was in default for payments due under the Glassy Lease prior to the Debtor’s bankruptcy filing and is in default for post-petition amounts due TCF. The cure amount due to TCF for the Glassy Lease is \$8931.28.

- (d) Prior to the Petition Date, TCF and Debtor The Cliffs at Keowee Springs Golf and Country Club LLC (“Keowee Springs”) entered into a Master Lease Agreement bearing account number ending in 6211 dated July 27, 2010 for the lease of certain turf and irrigation equipment described in Exhibit A thereto (“Keowee Springs Lease”). TCF promptly perfected its interest by filing a UCC Financing Statement on August 3, 2010 with the South Carolina Secretary of State. On May 31, 2012, TCF timely filed its proof of claim with respect to the Keowee Springs Lease. Debtor Keowee Springs was in default for payments due under the Keowee Lease prior to the Debtor’s bankruptcy filing and is in default for post-petition amounts due TCF. The cure amount due to TCF for the Keowee Springs Lease is \$3857.97.
- (e) Prior to the Petition Date, TCF and Debtor The Cliffs at Walnut Cove Golf and Country Club, LLC (“Walnut Cove”) entered into a Master Lease Agreement bearing account number ending in 6218 dated July 27, 2010 for the lease of certain turf and irrigation equipment described in Exhibit A thereto (“Walnut Cove Lease”). TCF properly perfected its interest in the equipment by filing a UCC Financing Statement on August 3, 2010 with the South Carolina Secretary of State. On May 31, 2012, TCF timely filed its proof of claim with respect to the Walnut Cove Lease. Debtor Walnut Cove was in default for payments due under the Walnut Cove Lease prior to the Debtor’s bankruptcy filing and is in default for post-petition amounts due TCF. The cure amount due to TCF for the Walnut Cove Lease is \$2507.44.
- (f) Prior to the Petition Date, TCF and Debtor The Cliffs at Keowee Vineyards Golf and Country Club, LLC (“Keowee Vineyards”) entered into a Master Lease Agreement bearing account number ending in 6219 dated July 27, 2010 for the lease of certain turf and irrigation equipment described in Equipment Schedule 300 thereto (“Keowee Vineyards Lease”). TCF properly perfected its interest in the equipment by filing a UCC Financing Statement on August 3, 2010 with the South Carolina Secretary of State. On May 31, 2012, TCF timely filed its proof of claim with respect to the Keowee Vineyards Lease. Debtor Keowee Vineyards was in default for payments due under the Keowee Vineyards Lease prior to the Debtor’s bankruptcy filing and is in default for post-petition

payments due TCF. The cure amount due to TCF under the Keowee Vineyards Lease is \$1067.66.

- (g) Prior to the Petition Date, TCF and Debtor The Cliffs Club and Hospitality Group, Inc. entered into six separate Guaranty Security Agreements with TCF pursuant to which it guaranteed all the indebtedness of the six Debtor affiliates to TCF. On May 31, 2012, TCF timely filed its proof of claim with respect to the Debtor Cliffs Club and Hospitality Group, Inc.

RESPONSE AND LIMITED OBJECTION

7. Article 6 of the Disclosure Statement provides that certain executory equipment leases are to be assumed by the Debtors. Exhibit 1 of the proposed Disclosure Statement sets forth a Schedule of Assumed Contracts listing cure amounts and payments allegedly due to TCF (shown as VGM Financial Services on Exhibit 1) and other executory equipment lease vendors whose contracts are to be assigned and assumed pursuant to the Plan. Pursuant to Exhibit 1, TCF is due a total cure amount of \$58,358.78. TCF objects to the Debtor's proposed cure amount and submits that the total correct cure amount due TCF is \$62,842.62. Article 6.02 of the Disclosure Statement provides the cure of defaults under the executory contracts to be assumed and assigned under the Plan including resolution of all objections to the adequacy of future performance and adequacy of amounts proposed to cure defaults shall be governed by the order confirming the Plan or other order authorizing assumptions of executory contracts. Further, Article 6.02 of the Disclosure Statement provides the cure amounts listed as Exhibit 1 are to be deemed satisfied when paid by Plan Sponsor. While the Disclosure Statement purports that any party to an executory contract to be assumed shall have twenty-one days after service of the Plan to object to cure amounts, TCF files this Response and Limited Objection in order to preserve its rights to object to the cure amounts listed for TCF pursuant to the Disclosure Statement.

8. TCF submits that the Disclosure Statement does not provides sufficient information to TCF regarding the effect of the assumption and assignment of the Leases as to the ability of the Plan Sponsor to service such payments to TCF upon assumption. TCF further

submits that the Disclosure Statement provides insufficient knowledge to TCF as to the treatment of TCF with respect to the cure amount and its claim.

9. Because the Disclosure Statement lacks information of a kind and in sufficient detail in so that TCF might make an informed decision regarding its cure amount and the Plan Sponsor's ability to perform in the future under the Leases, TCF is unable to make an informed judgment about the Debtor's proposed Plan.

10. Section § 1125 of the Bankruptcy Code requires that, before a plan proponent may solicit acceptance or rejection of a plan, the plan proponent must transmit to the parties to be solicited a disclosure statement containing "adequate information." The Bankruptcy Code defines "adequate information" as

"information of a kind, and sufficient detail, as far as reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of a potential material federal tax consequences of the plan to the debtor and any successor to the debtor, and a hypothetical investor typical of the holders of the claims or interest in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan. . . and in determining whether a disclosure statement provides adequate information, the court should consider complexity of the case, the benefit of additional information to the creditors and other parties in interest, providing the cost of providing information, . . ."

11 U.S.C. § 1125(a)(1).

11. The purpose of a disclosure statement is to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection to the Plan. Duffy v. United States Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996). Disclosure is "[o]ne of the fundamental policies underlying the Chapter 11 reorganization process. . ." In re Scioto Valley Mortgage Co., 88 B.R. 168, 170 (S.D. Ohio 1988). The determination of what constitutes adequate disclosure must be made on a case by case basis, but at a minimum, it would provide creditors with sufficient information to enable them to decide whether they should accept or reject a proposed plan. In re Ferretti, 128 B.R. 16,

18 (Bankr. D.W.H 1999). “A debtor cannot be expected to unerringly predict the future, but rather must provide information on all factors known to him at the time that bear upon the success or failure of the proposals set forth in the plan.” In re Walker, 11, 198 B.R. 476, 479 – 480 (Bankr. E.D. Va. 1996). (In re Ligon, 50 B.R. 127, 130 (Bankr. MD. Tenn. 1985)). It is critical for creditors to be provided disclosure with sufficient detail including the bases on which such disclosures are asserted. “Because creditors in the bankruptcy court rely heavily on the debtor’s disclosure statement in determining whether to approve a proposed reorganization plan, the importance of full and honest disclosure statement cannot be overstated.” Ryan Operations G.P. et. al. v. Santiam-Midwest Lumber Co. et. al. 80 Fd,3d 355, 362 (3d Cir. 1996).

12. The Disclosure Statement lacks correct information as to TCF’s cure amount and claims. “This court has found that opinion without factual support are not proper content of a disclosure statement and do not provide the parties voting on the plan with adequate information.” In re East Redley Corporation, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982). Citing In re Civitella, 14 B.R. 151 (E.D. Pa. 1981).

13. This Response and Limited Objection to the Disclosure Statement is made by TCF with a full reservation of its right to make further objections to the Disclosure Statement and with a full reservation of its right to object to the Plan and to the assumption and assignment of its Leases.

TCF Equipment Finance, Inc. respectfully prays that the Court grant the following relief:

1. Deny approval of Debtors’ Disclosure Statement unless Exhibit 1 of the Disclosure Statement is amended to properly reflect the correct cure amounts due TCF; and
2. Grant TCF such other relief as the Court deems just and proper.

Submitted this 28th day of June, 2012.

POYNER SPRUILL^{LLP}

By: /s/ Thomas L. Ogburn, III
Thomas L. Ogburn, III
Federal Court ID No. 6743
Diane P. Furr
301 South College Street, Suite 2300
Charlotte, NC 28202
Telephone: (704) 342-5250
Facsimile: (704) 342-5264

Attorneys for TCF Equipment Finance, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certified that copies of the foregoing Response and Limited Objection to the Disclosure Statement of TCF Equipment Finance, Inc. was served on the parties listed below by electronic service:

Attorneys for the Debtor:

Däna Wilkinson - danawilkinson@danawilkinsonlaw.com
Gary W. Marsh – gmarsh@mckennalong.com
J. Michael Levensgood – mlevengood@mckennalong.com
Bryan E. Bates – bbates@mckennalong.com

Counsel for the Plan Sponsor

Julio E. Mendoza, Jr. – rmendoza@nexsenpruet.com

Counsel for the Creditor's Committee

John B. Butler, III - jbbiii@bellsouth.net
Jonathan B. Alter – jonathan.alter@bingham.com

This the 28th day of June, 2012.

/s/ Thomas L. Ogburn, III
Thomas L. Ogburn, III
Federal Court ID No. 6743
Diane P. Furr
301 South College Street, Suite 2300
Charlotte, North Carolina 28202
Telephone: (704) 342-5250

Attorneys for TCF Equipment Finance, Inc.