

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

**In re:**

**The Cliffs Club & Hospitality Group, Inc., et al.,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,**

**Debtors.**

**The Cliffs at Mountain Park Golf & Country Club, LLC**

**Movant,**

**v.**

**Hawkins Nursery, Inc.,**

**Respondent**

**CHAPTER 11**

**Case No. 12-01220**

**Jointly Administered**

**Contested Matter**

**DEBTORS' OBJECTION TO THE ALLOWANCE OF CLAIM NO. 604 FILED BY HAWKINS NURSERY, INC. AND MOTION TO RECLASSIFY THIS SECURED CLAIM AS A GENERAL UNSECURED CLAIM**

COMES NOW The Cliffs at Mountain Park Golf & Country Club, LLC, one of the jointly administered debtors (the "Debtors"), and files an Objection to the Allowance of Claim No. 604 filed by Hawkins Nursery, Inc. as a Secured Claim and Motion to Reclassify said

<sup>1</sup> 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) (12-01237).

Secured Claim as a General Unsecured Claim (the "Objection"). In support of this Objection, the Debtors show the Court as follows:

### **I. Relief Requested**

1. By this Objection, the Debtors respectfully request the entry of an order, pursuant to Section 502 and 545 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, (i) disallowing Claim Number 604 filed by Hawkins Nursery, Inc. as a secured claim in Chapter 11 Case No. 12-01225 which is one of the cases being jointly administered in the above-styled case and (ii) reclassifying said secured claim as a general unsecured claim.

### **II. Jurisdiction**

2. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The statutory bases for the relief requested in 28 U.S.C. §§ 502 and 545, and S.C. Code Ann. § 29-5-10 et seq.

### **III. Background**

3. On February 28, 2012 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

4. On March 12, 2012, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in these Chapter 11 cases pursuant to that certain Fourth Amended Appointment of Committee of Unsecured Creditors [Docket Entry No. 141]. No trustee or examiner has been appointed in these Chapter 11 cases.

5. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

6. On April 10, 2012, the Court established May 31, 2012 as the deadline for non-governmental-entity creditors wishing to assert pre-petition claims against the Debtors to file their proofs of claim with BMC Group, the Debtors' claims and noticing agent (the "Claims Bar Date") [Docket Entry No. 278].

7. On May 11, 2012, Hawkins Nursery, Inc. filed a proof of claim as a secured creditor against The Cliffs at Mountain Park Golf & Country Club, Inc., one of the Debtors, in the amount of \$40,483.25 (the "Hawkins Nursery Claim"). The claim was assigned Claim No. 604 by BMC Group, the Debtors' claims and noticing agent. Attached to the Hawkins Nursery Claim are copies of the Notice and Certificate of Mechanic's Lien filed on October 21, 2011 and of the complaint filed in the Court of Common Pleas for the Thirteenth Judicial District on December 13, 2011 by Hawkins Nursery, Inc. to foreclose upon its mechanic's lien. The evidence supporting the amount of the claim are copies of invoices, the last of which to reflect goods provided to the Debtors is dated May 23, 2011 with a final invoice dated October 5, 2011 that states "Checked on Tree material N/C", and all of which are contained in an exhibit to the Notice and Certificate of Mechanic's Lien.

8. Hawkins Nursery, Inc. did not comply with South Carolina law for the perfection of a Mechanic's Lien Claim because the Notice and Certificate of Mechanic's Lien was filed more than 90 days after Hawkins Nursery, Inc. last provided goods and services to The Cliffs at Mountain Park Golf & Country Club, LLC.

9. The October 5, 2011 invoice is appears to be a clever effort to disguise the fact that the last goods and services were provided by Hawkins Nursery on May 21, 2011. A careful review of the invoices reflects that all of the earlier invoices contain a notation that they were mailed whereas the October 5, 2011 invoice does not contain such a notation. The Debtors did

not receive the October 5, 2011 invoice and were not aware of its existence until the notice of lien was filed.

10. Accordingly, the Debtors' seek to reclassify Claim No. 604 as an unsecured claim in the amount of \$40,483.25 that is not entitled to priority and to disallow the Hawkins Nursery Claim as a secured claim against the Debtors.

11. The Debtors have reviewed proofs of claim filed in these cases. The Debtors records reflect that May 21, 2011 was the date of the last goods or services provided by Hawkins Nursery, Inc. to The Cliffs at Mountain Park Golf & Country Club, LLC, and accordingly that August 21, 2011 was the deadline for a timely mechanic's lien notice to have been filed in the real estate records under South Carolina law. The filing on October 21, 2011 was accordingly two months too late. Furthermore, the deadline to have commenced the foreclosure action was November 17, 2011 and the filing of the lawsuit by Hawkins Nursery, Inc. on December 13, 2011 was untimely. This Objection is the result of the Debtors' review of their books and records.

#### **IV. Basis for Relief Requested**

12. The claimant has failed to demonstrate that the claimant took the necessary steps under South Carolina law for such claim to be considered as a secured mechanic's lien claim. The books and records of the Debtors reflect an unsecured obligation owing to the claimant. Without compliance with state law (in this case South Carolina Code section 29-5-90), the secured claim is unenforceable. Under Section 545(2) of the Bankruptcy Code, the Debtor may avoid any statutory lien that was not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the

commencement of the case. Therefore, the Hawkins Nursery Claim should be disallowed as a secured claim.

12. The Hawkins Nursery Claim should be reclassified as an unsecured claim not entitled to priority.

#### **V. Reservation of Rights**

13. The Debtors reserve the right to supplement this Objection and to subsequently object to the Hawkins Nursery Claim on any other appropriate ground, whether or not stated herein. In addition, the Debtors reserve the right to object to any and all other claims filed or scheduled in the Debtors' cases, and any other claims asserted by Hawkins Nursery, Inc.

#### **VI. Notice**

14. Notice of this Objection has been provided to Hawkins Nursery, Inc. and each other party entitled to notice, as listed in the certificate of service filed in connection herewith. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

**WHEREFORE**, the Debtors respectfully request that this Court:

1. enter the proposed order attached hereto as Exhibit "A";
2. disallow the Hawkins Nursery Claim as a secured claim in its entirety;
3. reclassify the Hawkins Nursery Claim as an unsecured claim not entitled to priority in the amount of \$40,483.25; and
4. grant the Debtors such other and further relief as is just and proper.

*[signatures follow]*

Dated: July 13, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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**EXHIBIT A**

**PROPOSED ORDER**

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

Case No. 12-01220

**ORDER GRANTING DEBTORS' OBJECTION TO ALLOWANCE OF CLAIM NO. 604  
FILED BY HAWKINS NURSERY, INC. AND RECLASSIFYING SAID SECURED  
CLAIM AS A GENERAL UNSECURED CLAIM**

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**

**In re:**

**The Cliffs Club & Hospitality Group, Inc., et  
al.,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,**

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**ORDER GRANTING DEBTORS' OBJECTION TO THE ALLOWANCE OF CLAIM  
NO. 604 FILED BY HAWKINS NURSERY, INC. AND MOTION TO RECLASSIFY THE  
SECURED CLAIM AS AN UNSECURED CLAIM**

Upon the Objection (Docket Entry # \_\_\_\_\_) (the "Objection") of The Cliffs at Mountain Park Golf & Country Club, LLC, one of the jointly administered debtors (the "Debtors"), requesting the entry of an order (i) disallowing the secured claim filed by Hawkins Nursery, Inc. and identified as Claim No. 604 in Chapter 11 Case No. 12-01225 and (ii) reclassifying said

<sup>1</sup> 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) (12-01237).

secured claim as an unsecured claim not entitled to priority, the Court having jurisdiction to consider the Objection and the relief requested therein; a hearing having been held on \_\_\_\_\_, 2012 to consider the Objection; due notice of the Objection and hearing having been given to all parties entitled thereto and all parties who have appeared in the case and requested notice, as listed in the certificate of service attached to Objection and filed with the Court; it appearing that no other or further notice need be provided; no objections having been filed or asserted; the Court having determined that the relief sought in the Objection is in the best interests of the bankruptcy estates, their creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED as follows:

1. The Objection is GRANTED.
2. Claim number 604 filed by Hawkins Nursery, Inc. as a secured claim in the above-styled case is disallowed in its entirety.
3. Claim number 604 filed by Hawkins Nursery, Inc. is reclassified as an unsecured claim not entitled to priority in the amount of \$40,483.25.
4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

AND IT IS SO ORDERED.

**PREPARED AND PRESENTED BY:**

/s/ Dána Wilkinson  
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