

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

Case No. 12-01220

**ORDER DENYING MOTION OF KEOWEE FALLS INVESTMENT GROUP, LLC
FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 3018(A) TEMPORARILY
ALLOWING ITS CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT
THE FIRST AMENDED AND RESTATED JOINT CHAPTER 11 PLAN FILED BY
THE DEBTORS AND THE PLAN SPONSOR**

The relief set forth on the following pages, for a total of 6 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
08/09/2012**



Entered: 08/09/2012

Chief US Bankruptcy Judge
District of South Carolina

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

In re:

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

Debtors.

CHAPTER 11

Case No. 12-01220

Jointly Administered

**ORDER DENYING MOTION OF KEOWEE FALLS INVESTMENT GROUP, LLC
FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 3018(A) TEMPORARILY
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THE DEBTORS AND THE PLAN SPONSOR**

This matter is before the Court on the Motion of Keowee Falls Investment Group, LLC (“KFIG”) for an Order Pursuant to Bankruptcy Rule 3018(a) (“Rule 3018 Motion”), by which KFIG has requested that this Court enter an order temporarily allowing KFIG’s claims filed in the above-captioned cases for purposes of permitting KFIG to vote, as an unsecured claimholder, to accept or reject the First Amended and Restated Joint Chapter 11 Plan (“Plan”) filed by the Debtors and the Plan Sponsor, as amended. KFIG filed claim numbers 1254 and 1261 (“KFIG Claims”) with BMC Group, Inc., the Claims Agent employed in these cases, on

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) (12-01237).

May 31, 2012, asserting claims in the amount of \$450.00 and \$16,669,860.00, respectively, which it asserts are unsecured debts based on an “Account Receivable - Inter-company.”

On July 12, 2012, The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases, as debtors and debtors-in-possession (“Debtors”) filed their First Omnibus Objection to the Allowance of Claim Nos. 1251, 1252, 1253, 1254, 1255, 1258, 1259, 1261, 1262, 1263, 1268, 1270, 1271, 1272, 1273, and 1274 filed by Cliffs Development Company Affiliates, which included objections to the KFIG Claims (the “KFIG Claims Objections”). Debtors assert that the KFIG Claims are not truly debt obligations and should be disallowed or recharacterized as equity in Debtors.

Debtors filed a Response in Opposition to the Rule 3018 Motion (“Response”), which incorporated the KFIG Claims Objections and requested that the Rule 3018 Motion be denied and that the KFIG Claims not be temporarily allowed for purposes of KFIG voting on the Plan. Alternatively, Debtors requested that the KFIG Claims be estimated at \$0 or such other amount as the Court deems proper for Plan voting purposes. The Official Committee of Unsecured Creditors in these Chapter 11 cases joined in the Debtors’ Response.

On August 6, 2012, this Court conducted a hearing on the Rule 3018 Motion and the Response. At the hearing, counsel for the Debtors and KFIG presented arguments and, by stipulation, evidence regarding, among other things, the application of the facts of the instant case to factors courts consider for purposes of recharacterizing a purported debt claim against a debtor into an equity interest in such debtor (*see, e.g., In re Dornier Aviation*, 453 F.3d 225, 233 (4th Cir. 2006)), in order to determine whether the KFIG Claims should be temporarily allowed for purposes of KFIG voting to accept or reject the Plan. The evidence presented indicated that

many of the factors supporting recharacterization of debts asserted in the KFIG Claims may be present.

The Court having reviewed and considered the Rule 3018 Motion, the Response, the KFIG Claims, and the record; the Court having considered the arguments of counsel and evidence presented at the hearing; the Court having jurisdiction to consider the Rule 3018 Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; the Court finds and concludes, solely for purposes of the Rule 3018 Motion and the issue presented therein of whether the KFIG Claims should be temporarily allowed for Plan voting purposes, that good cause exists to deny the Rule 3018 Motion because, *inter alia*: (i) KFIG has not demonstrated that the KFIG Claims are actual unsecured debt claims against the Debtors, and (ii) it appears that the KFIG Claims may be recharacterized as equity interests in the Debtors, such that KFIG should not be permitted to vote to accept or reject the Plan. This determination is specifically without prejudice to the parties' rights to establish the nature of the claim at the hearing on the KFIG Claims Objections, including KFIG's rights to establish an unsecured debt claim status for distribution purposes.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Rule 3018 Motion is DENIED.
2. The KFIG Claims shall not be temporarily allowed for purposes of permitting KFIG to vote to accept or reject the Plan as an unsecured debt claim.
3. This Order shall not operate as a grant or denial of the KFIG Claims Objections. All rights of KFIG, the Debtors, and any other party in interest regarding the ultimate allowance or disallowance of the KFIG Claims as debt claims against the Debtors, and the prosecution and defense of the KFIG Claims Objections, are expressly preserved.

4. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and implementation of this Order.

AND IT IS SO ORDERED.