

**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

A handwritten signature in cursive script that reads "John E. Waites". The signature is written in black ink and is positioned above the printed name of the judge.

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.,<sup>1</sup> 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  
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**

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

---

<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).

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.**

**Certificate of Notice Page 6 of 8**  
 United States Bankruptcy Court  
 District of South Carolina

In re:  
 The Cliffs Club & Hospitality Group, Inc  
 Debtor

Case No. 12-01220-jw  
 Chapter 11

**CERTIFICATE OF NOTICE**

District/off: 0420-7

User: lee  
 Form ID: pdf01

Page 1 of 3  
 Total Noticed: 37

Date Rcvd: Aug 09, 2012

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Aug 11, 2012.

db +The Cliffs Club & Hospitality Group, Inc., 3598 Highway 11, Travelers Rest, SC 29690-3598  
 aty +Gary H Liebowitz, Cole, Schotz, Meisel, Forman & Leonard, 300 E Lombard Street,  
 Baltimore, MD 21202-3219  
 aty +Gary W Marsh, McKenna Long & Aldridge LLP, 303 Peachtree Street NE, Suite 5300,  
 Atlanta, GA 30308-3265  
 aty George L Clauer, III, Clauer Law Firm, LLC, PO Box 477, Salem, SC 29676-0477, US  
 aty +John J. Monaghan, Holland & Knight, LLP, 10 St. James Avenue, Boston, MA 02116-3889  
 aty +Martha A Miller, Schulten Ward & Turner, LLP, 260 Peachtree Street NW, Suite 2700,  
 Atlanta, GA 30303-1240  
 aty Patrick W Carothers, Thorp Reed & Armstrong, LLP, 301 Grant Street 14th Floor,  
 Pittsburgh, PA 15219-1425  
 aty +Ralph R Hochberg, Platz Swergold Karlin Levine Goldberg, 1065 Avenue of the Americas,  
 18th Floor, New York, NY 10018-1878  
 aty +Teresa Sadutto-Carley, Platzer Swergold Karlin Levine Goldberg, 1065 Avenue of the Americas,  
 18th Floor, New York, NY 10018-1878  
 cr +Claims Recovery Group LLC, 92 Union Avenue, Cresskill, NJ 07626-2128  
 cr Cliffs Members AD Hoc Group, Inc., c/o Jonathan Alter, One State St.,  
 Hartford, CT 06103-3178  
 cr +Daniel & Catherine Goldberg, Barton Law Firm, P.A., %Barbara George Barton, PO Box 12046,  
 Columbia, SC 29211-2046  
 cr +Debt Acquisition Co of America V, LLC, 1565 Hotel Circle S, #310, San Diego, CA 92108-3419  
 cr Deere Credit Inc, c/o Robert A. Kerr, Jr., Moore & Van Allen, PLLC, P.O. Box 22828,  
 Charleston, SC 29413-2828  
 cr +Georgia Bridge & Dock, Inc., 2049 GA Highway 119 N, Attention: M. Davis,  
 Ellabell, GA 31308-8125  
 cr +Golf Agronomics Sand & Hauling, Inc., 2165 - 17th Street, Attention: S. Frawley,  
 Sarasota, FL 34234-7653  
 cr +Hawkins Nursery, 531 SOUTH MAIN ST., Ste., RL-1, Greenville, SC 29601-2500  
 cr +Helena Chemical Company, c/o M. Kevin McCarrell, Smith Moore Leatherwood LLP,  
 300 East McBee Avenue, Suite 500, Greenville, SC 29601-2882  
 intp James B Anthony, 3107 Table Rock Road, Pickens, SC 29671  
 intp +Keowee Falls Investment Group, LLC, A Corporation, c/o R. Geoffrey Levy, Esquire,  
 Levy Law Firm, LLC, 2300 Wayne Street, Columbia, SC 29201-2057  
 cr +Keowee Investment Properties, LLC, c/o Rory D. Whelehan, Womble Carlyle Sandridge & Rice LLP,  
 P. O. Box 10208, Greenville, SC 29603-0208  
 cr +Kevin McCarthy, c/o Thomas E. Dudley, III, Esq., 704 E. McBee Ave,  
 Greenville, SC 29601-3027  
 intp +Mark Brody, 212 Sumit Dr, Columbia, SC 29229-7770  
 cr +Medalist Golf, Inc., 327 Dahlonga Street, Attention: K. Velazquez, Cumming, GA 30040-8210  
 cr +Mitel Leasing, Inc., c/o Russell W. Mills, Hiersche, Hayward, Drakeley & Urbach, PC,  
 15303 Dallas Parkway, Suite 700, Addison, TX 75001-4610, U.S.  
 cr +Morgan Concrete Co., c/o Kevin Kenison, 704 E. McBee Ave., Greenville, SC 29601-3027  
 cr +Oracle America, Inc., Buchalter Nemer, Shawn M. Christianson, 55 2nd St., 17th Floor,  
 San Francisco, Ca 94105-3493  
 cr +RSL of Greenville, LLC, c/o Thomas E. Dudley III, Esq., 704 E. McBee Ave.,  
 Greenville, SC 29601-3027  
 cr +Riverside Claims LLC, P.O. Box 626, New York, NY 10024-0626  
 cr +Sonar Credit Partners II, LLC, 200 Business Park Drive, Suite 201, Armonk, NY 10504-1751  
 intp +TR Capital Management, LLC, 336 Atlantic Avenue, Suite 302, East Rockaway, NY 11518-1124  
 cr +US Foods, Inc., c/o Gary H. Liebowitz, Esq., Cole Schotz Meisel Forman & Leonard, PA,  
 300 E. Lombard Street, Suite 2000, Baltimore, MD 21202-3233  
 intp +Unsecured Creditors Committee, c/o John W. Sager, 104 Eagle Rock Road,  
 Landrum, SC 29356-3401  
 cr +Wall to Wall Golf, LLC, d/b/a Wall to Wall Golf, I, c/o Keven Kenison, 704 E. McBee Ave,  
 Greenville, SC 29601-3027  
 cr +William & Flonnie Shaw, 243 Horsehoe Lake Drive, Spartanburg, SC 29306-6663  
 cr William and Elaine Clear, c/o Louise M. Johnson, Esq., Haynsworth Sinkler Boyd, P.A.,  
 PO Box 11889, Columbia, SC 29211-1889  
 cr +Worthington Hyde Partners-II, L.P., c/o Tobias G Ward Jr., Post Office Box 6138,  
 Columbia, SC 29260-6138

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.  
 NONE. TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
 USPS regulations require that automation-compatible mail display the correct ZIP.

District/off: 0420-7

User: lee  
Form ID: pdf01

Page 2 of 3  
Total Noticed: 37

Date Rcvd: Aug 09, 2012

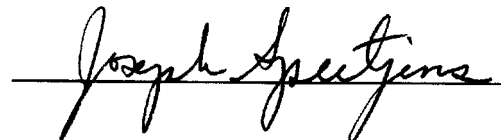
\*\*\*\*\* BYPASSED RECIPIENTS (continued) \*\*\*\*\*

**I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Aug 11, 2012

Signature:

A handwritten signature in black ink, reading "Joseph Speetjens", written over a horizontal line.

District/off: 0420-7

User: lee  
Form ID: pdf01

Page 3 of 3  
Total Noticed: 37

Date Rcvd: Aug 09, 2012

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on August 9, 2012 at the address(es) listed below:

A. Todd Darwin on behalf of Creditor Georgia Bridge & Dock, Inc. tdarwin@holcombebomar.com, rmitchell@holcombebomar.com  
B. Lindsay Crawford on behalf of Creditor Rodolfo Stern and Tania Stern wayne@crawfordvk.com, lindsay@crawfordvk.com  
BMC Group, Inc. bmc-cliffs@bmcgroup.com  
Barbara George Barton on behalf of Creditor Daniel & Catherine Goldberg bbarton@bartonlawsc.com, cbrimm@bartonlawsc.com;pmohan@bartonlawsc.com;afloyd@bartonlawsc.com;khandrock@bartonlawsc.com;phunt@bartonlawsc.com  
Bryan E. Bates on behalf of Debtor The Cliffs Club & Hospitality Group, Inc. bbates@mckennalong.com, krohling@mckennalong.com  
Charles W Azano on behalf of Creditor Wells Fargo Bank, National Association cwazano@mintz.com  
Dana Elizabeth Wilkinson on behalf of Debtor CCHG Holdings, Inc. danawilkinson@charter.net, dwecfmail@gmail.com  
Daniel S Bleck on behalf of Creditor Wells Fargo Bank, National Association dsbleck@mintz.com  
Elizabeth J. Philp on behalf of Creditor Wells Fargo Bank, National Association lphilp@mcnair.net, rmobley@mcnair.net  
Fair Harbor Capital, LLC vknox.fh@verizon.net  
George L. Clauer on behalf of Creditor Ellis McCracken gc\_clauerlaw@bellsouth.net  
James E. Sterling on behalf of Attorney Daniel McCollum sterling@smithjordan.com  
James W. Sheedy on behalf of Creditor GE Capital jimsheedy@driscollsheedy.com, sdriscoll@driscollsheedy.com  
Jane H. Downey on behalf of Creditor William & Flonnie Shaw jane@mttlaw.com, jessica@mttlaw.com;corey@mttlaw.com  
John B. Butler on behalf of Creditor Cliffs Members AD Hoc Group, Inc. jbbiii@bellsouth.net  
John M. Levengood on behalf of Debtor The Cliffs Club & Hospitality Group, Inc. mlevengood@mckennalong.com, sbrooks@mckennalong.com;gmarsh@mckennalong.com;bbates@mckennalong.com  
Jonathan B Alter on behalf of Interested Party Unsecured Creditors Committee jonathan.alter@bingham.com, linda.miller@bingham.com  
Joseph F. Buzhardt on behalf of U.S. Trustee US Trustee's Office USTPRegion04.CO.ECF@usdoj.gov, robert.b.doyle@usdoj.gov  
Julio E. Mendoza on behalf of Interested Party Carlile Development Company, LLC rmendoza@nexsenpruet.com, ecf@nexsenpruet.com  
Linda Barr on behalf of U.S. Trustee US Trustee's Office linda.k.barr@usdoj.gov  
Louise M. Johnson on behalf of Creditor William and Elaine Clear cjohnson@hsblawfirm.com, chaffer@hsblawfirm.com  
Malinda McAleer Pennington on behalf of Creditor Hawkins Nursery nef@mcaleerpennington.com  
Michael Kevin McCarrell on behalf of Creditor Helena Chemical Company kevin.mccarrell@smithmoorelaw.com, betty.ward@smithmoorelaw.com;kim.harmstad@smithmoorelaw.com  
Michael M. Beal on behalf of Creditor Wells Fargo Bank, National Association mbeal@mcnair.net, astokes@mcnair.net  
Nancy E. Johnson on behalf of Creditor NewLife Turf, Inc. nej@njohnson-bankruptcy.com, notices4nej@njohnson-bankruptcy.com  
R. Geoffrey Levy on behalf of Interested Party Keowee Falls Investment Group, LLC, A Corporation llfecf@levylawfirm.org, levylawecf@gmail.com,whitney@levylawfirm.org  
Randy A. Skinner on behalf of Interested Party James Anthony main@skinnerlawfirm.com, amy@skinnerlawfirm.com;candis@skinnerlawfirm.com;karen@skinnerlawfirm.com  
Ricoh Americas Corporation jennifer.orenstein@ricoh-usa.com  
Robert A. Kerr on behalf of Creditor Deere Credit Inc robertkerr@mvalaw.com, melissaaltman@mvalaw.com  
Rory D. Whelehan on behalf of Creditor Keowee Investment Properties, LLC rwhelehan@wcsr.com, kpedersoli@wcsr.com  
Tara E. Nauful on behalf of Creditor US Foods, Inc. tnauful@hsblawfirm.com, ccarter@hsblawfirm.com  
Thomas L. Ogburn on behalf of Creditor TCF Equipment Finance, Inc. togburn@poynerspruill.com, dfurr@poynerspruill.com  
Tobias G. Ward on behalf of Creditor Worthington Hyde Partners-II, L.P. tw@tobywardlaw.com  
Townes B. Johnson on behalf of Creditor Morgan Concrete Co. johnson@conlaw.com, moser@conlaw.com;townesjohnson@gmail.com  
US Trustee's Office USTPRegion04.CO.ECF@usdoj.gov  
William L Rothschild on behalf of Interested Party Carlile Development Company, LLC br@orrem.com

TOTAL: 36