

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:	CHAPTER 11
The Cliffs Club & Hospitality Group, Inc., <i>et al</i> , ¹ d/b/a The Cliffs Golf & Country Club,	Case No. 12-01220
Debtors.	Jointly Administered

RESPONSE IN OPPOSITION TO OBJECTION TO THE ALLOWANCE OF CLAIM NOS. 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202 AND 1203 FILED BY WORTHINGTON HYDE PARTNERS-II, L.P.

Worthington Hyde Partners-II, L.P. ("WHP"), by and through counsel, and pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure, files this Response in Opposition to Debtors' Objection to the Allowance of Claim Nos. 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202 and 1203, and respectfully states as follows:

BACKGROUND

1. Each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 28, 2012 (the "Petition Date"). The cases have been jointly administered.

2. On April 10, 2012, the Court established May 31, 2012, as the deadline for creditors wishing to assert pre-petition claims against the Debtors to file their proofs of claim

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).

with BMC Group, Inc. [Doc. No. 278]. Further, Debtors, along with the "Plan Sponsor"², filed their Plan and Disclosure Statement in support of the Joint Chapter 11 Plan on May 22, 2012. The Debtors and Plan Sponsor subsequently filed their First Amended and Restated Joint Chapter 11 Plan Filed By Debtors and the Plan Sponsor dated June 30, 2012, as modified by amendments filed on July 27, 2012 (the "First Amended Plan") [Doc. No. 616].

3. The First Amended Plan ("Amended Plan") was confirmed by Order entered on August 17, 2012 [Doc. No. 678].

4. WHP made a loan to Keowee Falls Investment Group, LLC and Keowee Investment Group, LLC in the amount of \$20,000,000. As a material condition to the loan, the parties entered an Agreement Regarding Memberships dated August 8, 2008, and the Supplemental Agreement Regarding Memberships dated May 12, 2010 (the "Agreement"). The Agreement was executed by WHP, the Debtors and certain others³ including each of the Debtor "Club" entities. Copies of the August 8, 2008 agreement and the supplemental agreement constituting the Agreement are attached hereto and incorporated herein as Exhibits A and B respectively.

5. The Agreement gave WHP the ability to offer memberships in certain "Cliff Clubs"⁴ for sale, in the event that WHP acquired titled to certain real property securing the \$20,000,000 loan. The Agreement gave WHP the ability to offer these memberships to all

² As defined in the Disclosure Statement and Plan.

³ The parties to the Agreement include: WHP, The Cliffs Communities, Inc. The Cliffs Golf & Country Club, Inc., James B. Anthony, The Cliffs at Keowee Vineyards Golf & Country Club, LLC, The Cliffs at Walnut Cove Golf & Country Club, LLC, The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Keowee Falls South Golf & Country Club, LLC, The Cliffs at Keowee Springs Golf & Country Club, LLC, The Cliffs at High Carolina Golf & Country Club, LLC, The Cliffs at Keowee Falls Golf & Country Club, LLC, and The Cliffs Golf & Country Club, Inc. d/b/a The Cliffs at Glassy Golf & Country Club, LLC

⁴ The Cliffs Clubs are: Cliffs Club at Glassy, Cliffs Club at Valley, Cliffs Club at Walnut Cove, Cliffs Club at Mountain Park, Cliffs Club at Keowee Vineyards, Cliffs Club at Keowee Falls and Cliffs Club at Keowee Springs. All of which are operated by Debtors.

purchasers of platted lots within the Cliffs Communities at seventy-five percent (75%) of the market price.

6. The Cliffs Club and Hospitality Group, Inc. case listed the Agreement under Schedule G of its Schedules as an Executory Contract, along with each companion Debtor case which likewise reflected the Agreement as an Executory Contract in its filed Schedules.

7. As the Agreement was not listed as an assumed contract, it is "deemed rejected" under the terms of the confirmed Amended Plan.

8. On May 31, 2012, WHP filed its proof of claim ("Claim") in each of the Debtor entities' bankruptcy cases which was a party to the Agreement and which it claimed an unsecured debt, based on the anticipated rejection of the Agreement resulting in a breach thereof, in the amount of \$2,962,500.00.

9. Subsequently, on July 20, 2012, Debtors filed an objection to WHP's Claim ("Objection"). [Doc. No. 584].

ARGUMENT

10. In the Objection, Debtors object to WHP's Claim based on four grounds. First, Debtors argue that claim nos. 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203 are duplicative. Second, Debtors argue that the documents and materials submitted with the Claim reflect that none of the Debtors is liable to WHP. Third, Debtors argue that the terms of the Agreement only provide for damages in certain events. Fourth, Debtors argue that if WHP is entitled to damages, WHP should only be entitled to \$5,000.00.

11. All of Debtors' arguments are fundamentally flawed.

WHP's duplicative claims.

12. WHP filed a total of 9 claims (claim nos. 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203). The claims are substantially similar in that the underlying debt is related to the same Agreement. However, several of the debtor entities were party to the Agreement, and each filed their own bankruptcy petition. As stated above, each of the Debtor entities which is a party to the Agreement listed it as an Executory Contract in its individual Schedules as filed. As such, WHP filed a proof of claim in each of the bankruptcy headings (and style) to ensure its claim would be properly administered.

13. WHP acknowledges that it should have only one claim allowed under the consolidated and joint Amended Plan as confirmed.

WHP's Claim should be allowed as filed because Debtors have failed to present evidence sufficient to rebut the prima facie validity of WHP's Claim.

14. Federal Rule of Bankruptcy Procedure 3001(f) provides that a validly filed proof of claim "shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "A proof of claim filed pursuant to Federal Rule of Bankruptcy Procedure 3001 'shall constitute prima facie evidence of the validity and amount of the claim.'" *In re Bateman*, 331 F.3d 821, 827 (11th Cir. 2003) (quoting Fed. R. Bankr. P. 3001). Thus, the party objecting to the proof of claim bears the burden of producing sufficient evidence of probative force equal to that of the allegations of the claim to rebut the presumptive validity of the proof of claim. *See In re James*, 308 B.R. 569, 570-71 (Bankr. S.D. Ala. 2002) (quoting *In re Britt*, 199 B.R. 1000, 1008 (Bankr. N.D. Ala. 1996)); *see also* 9 Collier on Bankruptcy at ¶ 3001.09[2] (15th ed. 1996).

15. In the instant matter, WHP's Claim, along with the summary of documentation in support of its Claim attached thereto, constitutes prima facie evidence of the validity and amount of Claim against the Debtors' estate. Thus, Debtors bear the burden of presenting affirmative evidence to demonstrate why its Claim is invalid. Debtors have failed to offer any evidence to establish the invalidity of WHP's Claim.

16. WHP is a holder of a Claim in the amount of \$2,962,500.00 based on the breach of the Agreement of a result of the rejection of the Agreement under the terms of the Amended Plan. Debtors list the Agreement in their schedules as an executory contract, Debtors signed the Agreement as parties to the Agreement and cannot now claim that they are not subject to the terms of the Agreement for any breach based on Debtors' rejection of the executory contract. Further, Debtors have acknowledged that the market price of a club membership is \$50,000.00. *See* Doc. No. 584, ¶12; Doc. No. 479, Exhibit 2, ¶2. Debtor asserts no reasonable basis that there will be any decrease in the cost or value of a club membership in the future. In fact, if the Plan Sponsor is successful as proposed under the Amended Plan, the cost of a club membership will in all likelihood increase in the future.

17. Debtors' third argument relies on language in the Agreement that provides that WHP is entitled to a 25% discount on membership initiation prices in Debtors' golf and country clubs only in the event of foreclosure on real property⁵ owned by third party non-Debtor entities (i.e. Keowee Falls Investment Group, LLC and Keowee Investment Group, LLC). Debtors claim that they are "informed and believe that [WHP] has not yet foreclosed on such property", and thus, WHP would not be entitled to its claimed 25% discount.

⁵ Property known as The Cliffs at Keowee Falls, The Cliffs of Keowee Vineyards and The Cliffs at Glassy.

18. However, WHP is the property owner, through foreclosure, in the Cliffs Communities as more particularly described herein. WHP is the owner of 31 platted lots in The Cliffs at Glassy, 31 platted lots at The Cliffs of Keowee Vineyards, and 28 platted lots and approximately 500 acres of raw land in The Cliffs at Keowee Falls North.

19. WHP is also the holder of a first mortgage on 140 platted lots and approximately 1598 acres of raw land and various items of personal property at The Cliffs at Keowee Falls South. This property is currently owned by Keowee Falls Investment Group, LLC ("KFIG"). On or about March 2, 2012, KFIG filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of South Carolina as case number 12-01399-jw. KFIG has a pending Motion to Sale under 11 U.S.C. § 363 in which the underlying asset purchase agreement ("APA") provides that WHP will acquire the 140 lots at The Cliffs at Keowee Falls South from KFIG ("363 Sale"). Notably, the property subject to purchase under the APA was the subject of a pending foreclosure by WHP which was halted by the filing of the voluntary petition for relief by KFIG on the eve of the foreclosure sale.

20. Therefore, all 237 lots accounted for in WHP's Claim are owned (or will be owned after the court approves the 363 Sale) by WHP, thus entitling WHP to damages as a result of Debtors' rejection of the Agreement. Damages are based on the expected 25% discount on the market price (\$50,000) of a "Club Membership" in the Cliffs Clubs.⁶

⁶ Damages are loss of membership discount multiplied by the number of lots (as illustrated below).

Price of a Club Membership:	\$50,000.00
Discount under Agreement (25%)	\$12,500.00
Number of lots	237
Total	\$2,962,500.00

21. In its Objection, the Debtors assert that WHP "cannot provide any reliable timeframe in which it might be able to sell the subject parcels." However, the Agreement establishes no time limit for the purchase of a "Club Membership." This is not a requirement of the Agreement.

Debtors assert no basis for the allowance of the Claim in a reduced amount of \$5,000.00.

22. Lastly, Debtors' fourth argument under their Objection is an attempt to shift the burden of proof to WHP. Fed. R. Bankr. P. 3001 and 3007. However, as stated above, Debtors bear the burden of producing sufficient evidence of probative force equal to that of the allegations of the claim to rebut the presumptive validity of the proof of claim. *See In re James*, 308 B.R. 569, 570-71 (Bankr. S.D. Ala. 2002) (quoting *In re Britt*, 199 B.R. 1000, 1008 (Bankr. N.D. Ala. 1996)); *see also* 9 Collier on Bankruptcy at ¶ 3001.09[2] (15th ed. 1996). Here, Debtors does not present *any* affirmative evidence to demonstrate why its WHP's Claim is invalid.

23. Debtors have failed to meet their initial burden of producing evidence sufficient to rebut the prima facie effect of WHP's Claim. Evidence necessary to rebut the presumption of validity "must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim." 9 Collier on Bankruptcy, ¶ 3001.09 [2], at 3001-27 (15th ed. rev. 2004) (*citing In re Wells*, 51 B.R. 563 (D. Colo. 1985); *Matter of Unimet Corp.*, 74 B.R. 156 (Bankr. N.D. Ohio 1987)). Debtors presented no such evidence.

CONCLUSION

WHEREFORE, premises considered, WHP prays that the Debtors' Objection be overruled and that WHP have an allowed unsecured claim to be afforded treatment under the confirmed Amended Plan as a result of the rejection of the Agreement as an Executory Contract, and for such other and further relief to which WHP may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served the 19th day of August, 2012, electronically via ECF upon all the parties of record through the Court's electronic filing system and also, by sending same via electronic mail to the following on this the 19th day of August, 2012, at Columbia, South Carolina:

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