

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

**IN RE:**

**CCHG Liquidation Co.,**

**Debtor.**

**CHAPTER 11**

**Case No. 12-01220**

**Substantively Consolidated**

**Katie S. Goodman, Liquidation Trustee of  
CCHG Liquidation Co.,**

**Plaintiff,**

**Adversary Proceeding No.**  
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**v.**

**Allora, LLC, a South Carolina limited  
liability company; Mr. William Santerini, and  
Mr. Kevin Culhan,**

**Defendants**

**COMPLAINT FOR MONEY DAMAGES FROM BREACH OF DESIGN FEE  
AGREEMENT, TURNOVER OF PROPERTY, UNJUST ENRICHMENT,  
FRAUDULENT TRANSFER, AND SUIT ON GUARANTEES**

Katie S. Goodman, as Liquidation Trustee (the "Liquidation Trustee") of the Liquidating Trust (defined below) for the bankruptcy estates of The Cliffs Club & Hospitality Group, Inc., *et al.* (the "Debtors", now substantively consolidated as CCHG Liquidation Co. (the "Debtor")),<sup>1</sup> by and through undersigned counsel, pursuant to, *inter*

<sup>1</sup> The Debtors (now substantively consolidated as the single Debtor), 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. n/k/a CCHG Liquidation Co. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC n/k/a CCHG Liquidation Co. II, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC n/k/a CCHG Liquidation Co. III, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IV, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC n/k/a CCHG Liquidation

*alia*, Sections 541, 542, 548 and 550 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby files this Complaint for monetary damages against Allora, LLC, a South Carolina limited liability company (“Allora”), Mr. William Santerini (“Santerini”), and Mr. Kevin Culhan (“Culhan,” together with Allora and Santerini, the “Defendants”). In support hereof, the Liquidation Trustee alleges and avers as follows:

**Statutory Predicates, Jurisdiction and Venue**

1. This Complaint is brought pursuant to, *inter alia*, Bankruptcy Rule 7001, Sections 541, 542, 548 and 550 of the Bankruptcy Code and applicable state law.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1334(b). This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (H) and (O).
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

**The Plaintiff**

4. On February 28, 2012 (the “Petition Date”), the Debtors filed for bankruptcy relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina (the “Bankruptcy Court”).
5. On August 17, 2012, the Bankruptcy Court confirmed the First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor, as amended (the “Plan”). Section 5.04 of the Plan established a liquidating trust (the “Liquidating

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Co. V, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VI, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VII, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VIII, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IX, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC n/k/a CCHG Liquidation Co. X, LLC (9665) (12-01237).

Trust”) with respect to the Debtors and the substantively-consolidated Debtor, and Katie S. Goodman was appointed as the Liquidation Trustee.

6. Section 8.02 of the Plan authorized the Liquidation Trustee to, among other things, pursue all Retained Actions (as defined in the Plan) of the substantively-consolidated Debtor, including certain litigation rights, claims, causes of action, defenses and counter claims of the Debtors’ bankruptcy estates.

### **The Defendants**

7. Allora is a South Carolina limited liability company, which, upon information and belief, is located at 420 The Parkway, Suite E1, Greer, South Carolina 29650-5206. Allora is subject to service of process by serving its Registered Agent, William A. Santerini, III at 409 Thornblade Boulevard, Greer, South Carolina 29650.

8. Santerini is an individual resident of Greenville County, South Carolina. Santerini may be served at his residence, which, upon information and belief, is located at 409 Thornblade Boulevard, Greer, South Carolina, 29650-4433.

9. Culhan is an individual resident of Greenville County, South Carolina. Culhan may be served at his residence, which, upon information and belief, is located at 17 Shannon Creek Court, Greenville, South Carolina, 29615-5451.

### **Background**

10. Prior to confirmation of the Plan, the Debtors owned and operated numerous golf communities in North Carolina and South Carolina, specifically The Cliffs at High Carolina Golf & Country Club, LLC, The Cliffs Valley Golf & Country Club, LLC, The Cliffs at Glassy Golf & Country Club, LLC, The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Keowee Springs Golf & Country Club, LLC, The

Cliffs at Keowee Vineyards Golf & Country Club, LLC, The Cliffs at Keowee Falls Golf & Country Club, LLC, and the Cliffs at Walnut Cove Golf & Country Club, LLC.

11. Allora is an architectural firm that is licensed to do business as an architect in North Carolina and South Carolina. Upon information and belief, Santerini is the Chief Executive Officer of Allora, and Culhan is the President of Allora.

**The Design Fee Agreement**

12. The Debtors entered into that certain Agreement to Prepay Architectural Design Fees with Allora dated as of August 20, 2010 (the “Design Fee Agreement”). A true and correct copy of the Design Fee Agreement is attached hereto as Exhibit 1.

13. Pursuant to the Design Fee Agreement, Santerini was an individual guarantor of Allora’s obligations under the Design Fee Agreement.

14. Pursuant to the Design Fee Agreement, Culhan was an individual guarantor of Allora’s obligations under the Design Fee Agreement.

15. Under the Design Fee Agreement, Allora agreed to provide architectural services to the Debtors at specified rates in exchange for the Debtors’ willingness to prepay Allora’s fees in the amount of \$500,000.00.

16. Pursuant to their obligations under the Design Fee Agreement, the Debtors paid to Allora the sum of \$500,000.00.

17. The Debtors were entitled to terminate the Design Fee Agreement for convenience, pursuant to its terms. Specifically, paragraph 7 of the Design Fee Agreement provides that the Debtors were entitled to terminate any and all work under the Design Fee Agreement “for any reason whenever Client [(the Debtors)] determines such termination is in Cliffs’ best interest.”

18. In such an event of termination, paragraph 7 of the Design Fee Agreement provides that Allora “shall be entitled to its actual costs incurred to the effective date of said termination.”

**Cancellation of the Design Fee Agreement**

19. Subsequent to the execution of the Design Fee Agreement and prior to the Petition Date, in light of the decline of the real estate market and the economy generally, the Debtors sent Allora a letter requesting a refund of the \$464,436.00 outstanding balance of unused prepaid fees (“First Demand Letter”). A true and correct copy of the First Demand Letter is attached hereto as Exhibit 2.

20. To date, Allora has failed and refused to pay the Debtors the outstanding balance of unused prepaid fees owing as demanded in such letter.

21. The Debtors subsequently commenced their bankruptcy cases, and did not assume the Design Fee Agreement during the pendency of their bankruptcy cases; consequently, the Design Fee Agreement was deemed rejected and terminated pursuant to the terms of the confirmed Plan.

22. On October 23, 2012, the Liquidation Trustee sent a letter to the Defendants demanding payment of the \$464,436.00 outstanding balance of unused prepaid fees within twenty days (“Second Demand Letter”). A true and correct copy of the Second Demand Letter is attached hereto as Exhibit 3.

23. To date, the Defendants have failed and refused to pay the outstanding balance from the Design Fee Agreement as demanded by the Liquidation Trustee.

**Count 1 – Breach of Contract**

24. The Liquidation Trustee incorporates by reference Paragraphs 1-23 of this Complaint as if set forth fully herein.

25. Allora has breached the Design Fee Agreement by failing to repay the outstanding balance of unused prepaid fees following termination of the Design Fee Agreement and demand for payment.

26. Allora is indebted to the Liquidation Trustee, on behalf of the Debtor, in an amount of not less than \$464,436.00. Demand has been made, and to date Allora has failed and refused to pay said amount.

27. The Liquidation Trustee, therefore, is entitled to a judgment in its favor against Allora in the amount of \$464,436.00 and, to the maximum extent allowed by law, for pre-judgment interest, costs and attorneys' fees as a result of Allora's failure to pay said amount.

**Count 2 – Turnover**

28. The Liquidation Trustee incorporates by reference Paragraphs 1-27 of this Complaint as if set forth fully herein.

29. Section 541 of the Bankruptcy Code provides that the Debtor's property is comprised of all property "wherever located and by whomever held." Section 542 of the Bankruptcy Code requires a person or entity that holds property of the estate to turn over such property.

30. Despite repeated requests, Allora has failed and refused to turn over the \$464,436.00 owed to the Liquidation Trustee, on behalf of the Debtor, which sum

represents property of the Debtor's bankruptcy estate, thereby violating Section 542 of the Bankruptcy Code.

31. Therefore, the Liquidation Trustee is entitled to an award in its favor against Allora for the turnover of the \$464,436.00 owed. Further, the Liquidation Trustee is entitled, to the maximum extent allowed by law, to pre-judgment interest, costs and attorneys' fees as a result of Allora's failure to turn over this amount.

### **Count 3 – Unjust Enrichment**

32. The Liquidation Trustee incorporates by reference Paragraphs 1-31 of this Complaint as if set forth fully herein.

33. By pre-paying \$500,000.00 in fees to Allora, the Debtors conferred a non-gratuitous benefit on Allora.

34. By retaining the pre-paid fees under the Design Fee Agreement while only incurring \$35,564.00 in costs for labor and expenses, Allora received an unearned benefit from the Debtors' prepayment of fees valued in the amount of \$464,436.00.

35. It would be inequitable for Allora to retain the \$464,436.00 in unearned pre-paid fees from the Debtors where the Debtors were entitled to terminate the Design Fee Agreement upon notice to Allora and where the Design Fee Agreement only allows Allora to retain its actual costs incurred to the effective date of the termination.

36. Therefore, Allora has been unjustly enriched from the benefit conferred by the Debtors in the amount of \$464,436.00, and the Liquidation Trustee is entitled to an award in its favor for the amount of the benefit conferred.

**Count 4 – Fraudulent Transfer**

37. The Liquidation Trustee incorporates by reference Paragraphs 1-36 of this Complaint as if set forth fully herein.

38. Within two years before the Petition Date, the Debtors transferred to Allora the sum of \$500,000.00.

39. The Debtors received less than reasonably equivalent value in exchange for such transfer. Specifically, the Debtors received \$464,436.00 less than reasonably equivalent value in exchange for such transfer.

40. The Debtors were insolvent on the date such transfer was made, or became insolvent as a result of such transfer.

41. The transfer of \$464,436.00 from the Debtors to Allora pursuant to the Design Fee Agreement was fraudulent pursuant to 11 U. S. C. § 548(a)(1) and should be avoided.

42. The Liquidation Trustee, on behalf of the Debtor, is entitled to recover the \$464,436.00 from Allora, as the initial transferee, pursuant to 11 U.S.C. § 550(a)(1).

**Count 5 – Suit on Guarantee (Santerini)**

43. The Liquidation Trustee incorporates by reference Paragraphs 1-42 of this Complaint as if set forth fully herein.

44. Pursuant to the Design Fee Agreement, Santerini agreed to become unconditionally liable to the Debtors for all outstanding balances owing under the Design Fee Agreement if Allora breached the Design Fee Agreement.



45. Pursuant to the Design Fee Agreement, Santerini is unconditionally liable to the Debtors for all outstanding balances owing under the Design Fee Agreement as a result of Allora's breach of the Design Fee Agreement.

46. By failing and refusing to pay the outstanding balances owing under the Design Fee Agreement after breach by Allora, Santerini has breached the Design Fee Agreement.

47. The Debtor has been damaged as a result of Santerini's breach. The total outstanding balance owing under the Design Fee Agreement is \$464,436.00, exclusive of pre-judgment interest, costs and attorneys' fees.

48. The Liquidation Trustee, on behalf of the Debtor, is entitled to recover from Santerini all amounts due and accruing under the Design Fee Agreement through the date of payment, including pre-judgment interest at the statutory rate and other fees, costs, and charges, which shall continue to accrue as provided in the Design Fee Agreement until full repayment is made by Santerini.

49. Finally, pursuant to the Design Fee Agreement, the Liquidation Trustee, on behalf of the Debtor, is entitled to recover from Santerini its fees, costs and expenses incurred in bringing this action, including, without limitation, its reasonable attorneys' fees.

**Count 6 – Suit on Guarantee (Culhan)**

50. The Liquidation Trustee incorporates by reference Paragraphs 1-49 of this Complaint as if set forth fully herein.

51. Pursuant to the Design Fee Agreement, Culhan agreed to become unconditionally liable to the Debtors for all outstanding balances owing under the Design Fee Agreement if Allora breached the Design Fee Agreement.

52. Pursuant to the Design Fee Agreement, Culhan is unconditionally liable to the Debtors for all outstanding balances owing under the Design Fee Agreement as a result of Allora's breach of the Design Fee Agreement.

53. By failing and refusing to pay the outstanding balances owing under the Design Fee Agreement after breach by Allora, Culhan has breached the Design Fee Agreement.

54. The Debtor has been damaged as a result of Culhan's breach. The total outstanding balance owing under the Design Fee Agreement is \$464,436.00, exclusive of pre-judgment interest, costs and attorneys' fees.

55. The Liquidation Trustee, on behalf of the Debtor, is entitled to recover from Culhan all amounts due and accruing under the Design Fee Agreement through the date of payment, including pre-judgment interest at the statutory rate and other fees, costs, and charges, which shall continue to accrue as provided in the Design Fee Agreement until full repayment is made by Culhan.

56. Finally, pursuant to the Design Fee Agreement, the Liquidation Trustee, on behalf of the Debtor, is entitled to recover from Culhan its fees, costs and expenses incurred in bringing this action, including, without limitation, its reasonable attorneys' fees.

WHEREFORE, the Liquidation Trustee respectfully requests the following relief:

(i) that, pursuant to Count I, judgment be entered in favor of the Liquidation Trustee and against Allora for \$464,436.00 and, to the maximum extent allowed by law, for pre-judgment interest, costs and attorneys' fees as a result of Allora's failure to pay said amount in breach of the Design Fee Agreement;

(ii) that, pursuant to Count II, judgment be entered in favor of the Liquidation Trustee and against Allora for violation of Sections 541 and 542 of the Bankruptcy Code, in the principal amount of \$464,436.00 for actual damages and, to the maximum extent allowed by law, for pre-judgment interest, costs and attorneys' fees;

(iii) that, pursuant to Count III of the Complaint, judgment be entered in favor of the Liquidation Trustee and against Allora on the Liquidation Trustee's claim for unjust enrichment in the amount of \$464,436.00;

(iv) that, pursuant to Count IV of the Complaint, judgment be entered in favor of the Liquidation Trustee and against Allora finding that the \$464,436.00 paid by the Debtors to Allora pursuant to the Design Fee Agreement was a fraudulent transfer under 11 U.S.C. § 548(a)(1), that such transfer is avoidable by the Liquidation Trustee, and that the Liquidation Trustee is entitled to recover the amount of such transfer from Allora, as the initial transferee, pursuant to 11 U.S.C. § 550(a)(1);

(v) that, pursuant to Count V of the Complaint, judgment be entered in favor of the Liquidation Trustee and against Santerini for \$464,436.00 and, to the maximum extent allowed by law, for pre-judgment interest, costs and attorneys' fees as a result of Santerini's failure to pay said amount in breach of his guarantee under the Design Fee Agreement;

(vi) that, pursuant to Count VI of the Complaint, judgment be entered in favor of the Liquidation Trustee and against Culhan for \$464,436.00 and, to the maximum extent allowed by law, for pre-judgment interest, costs and attorneys' fees as a result of Culhan's failure to pay said amount in breach of his guarantee under the Design Fee Agreement; and

(vii) that the Court enter judgment for the Liquidation Trustee for such other and further relief as the Court deems appropriate.

This 3rd day of January, 2013.

/s/ Däna Wilkinson

Däna Wilkinson  
District Court I.D. No. 4663  
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