IN THE COUNTY COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

In re:	Chapter 11
Daymark Realty Advisors, Inc.,	Case No. 18-23750-RBR
Daymark Residential Management, Inc.	Case No. 18-23751-RBR
Daymark Properties Realty, Inc.	Case No. 18-23750-RBR
	[Substantively Consolidated]
Debtors.	
_____/	

MOTION TO SET "CAP FUND" MEDIATION

Consolidated Debtors Daymark Realty Advisors, Inc.; Daymark Properties Realty, Inc.; and Daymark Residential Management, Inc. (the "Debtors"), by and through undersigned counsel, file this *Motion to Set Cap Fund Mediation* (the "Motion") and requests that this Honorable Court enter an Order requiring in-person mediation of the outstanding disputes between Debtor and the *Cap Fund Claimants* (the "Claimants", with the Debtors, the "Parties") within 30 days.

SUMMARY

Debtors and Claimants have tentatively agreed to participate in mediation facilitated by Herbert Stettin. Debtors believe that settlement discussions facilitated by an independent professional neutral would greatly assist the Parties in achieving a resolution of their disputes.

Absent a resolution, litigation costs and expenses will continue to increase to the detriment of all constituencies. Hence, all the interested parties would greatly benefit from participating in a mediation.

To ensure prompt in-person participation, Debtors seek an order formalizing the mediation and compelling the Parties to participate, in-person, by an individual with full settlement authority within 30 days.

BACKGROUND

1. On November 4, 2018, the Debtors commenced separate Chapter 11 bankruptcy cases (the "Petition Date") (ECF No. 1). Since that time, Debtors have operated as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. This Court granted Debtors' motion to consolidate the bankruptcy cases and entered its order approving joint administration on December 10, 2018 (ECF No. 32) and substantive consolidation on February 1, 2019 (ECF #102).

3. On January 2, 2019, Debtor filed its *Joint Disclosure Statement in Support of Joint Chapter 11 Plan of Daymark Realty Advisors, Inc, Daymark Residential Management, Inc. and Daymark Property Realty, Inc*. (ECF No. 71) (the "Disclosure Statement") and the *Joint Chapter 11 Plan of Daymark Realty Advisors, Inc, Daymark Residential Management, Inc. and Daymark Property Realty, Inc*. (ECF No. 72).

4. On March 4, 2019, Claimants commenced an adversary proceeding against Debtors (the "Adversary Proceeding"). (ECF #155).

5. On March 8, 2019, Claimants filed its objection to the Disclosure Statement. (ECF #175).

6. On March 8, 2019, Claimants also filed their *Notice of Filing Proofs of Claims* identifying Claimants' claim in the amount of $113,301,000.

7. On March 12, 2019, the Parties agreed to request that the Court continue the hearing on the Disclosure Statement to permit Debtor time to supplement same and to allow the Parties an opportunity to mediate their disputes.[1]

ARGUMENT

8. The Court has the authority to assign a matter to mediation upon motion of any interested party. Local Rule 9019-2(B)(1).

[1] Debtor anticipates filing a motion to continue the hearing on the Disclosure Statement.

9. Courts usually grant motions to compel mediations when it would benefit the resolution of a dispute. *Blanco GmbH + Co. KG v. Vlanco Indus., LLC*, WL 12838280, at *2 (S.D. Fla. Nov. 19, 2012) ("Given the benefits an early resolution of this dispute would bring and the absence of any objection from Defendants, the Court shall grant the Motion to Compel Mediation.").

10. Litigating the Adversary Proceeding, objections to claims, objections to disclosure and confirmation will likely result in great costs and court expenses, with the result of diminishing the already scarce resources of Debtor's estate.

11. Such result would not benefit the Debtor, its creditors or the Claimants.

12. Conversely, all parties in interest would be greatly benefitted by an amicable resolution of the outstanding disputes which can be facilitated though the attendance of a formal in-person dispute resolution proceeding with the assistance of a professional mediator.

WHEREFORE, Debtor respectfully requests that the Court will compel the Parties to attend in-person mediation within 30 days and grant such other relief as justified by the circumstances in this case.

March 12, 2019

Respectfully submitted,

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