

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)	
)	
ERICKSON RETIREMENT)	
COMMUNITIES, LLC, <i>et al.</i> ,)	
)	Case No. 09-37010 (SGJ)
)	Chapter 11
Debtors)	(Jointly Administered)
)	

**TREASURER OF DOUGLAS COUNTY, COLORADO'S MOTION TO
BIFURCATE CLAIM OBJECTION HEARING**

Sharon K. Jones, Treasurer of Douglas County, Colorado ("Douglas County"), moves to bifurcate the hearing on the Debtors' Amended Motion for Determination of Tax Liability under 11 U.S.C. §§ 105 and 505 (the "Claim Objection") into separate hearings on:

(1) the legal issues raised in the Claim Objection; namely: whether this Court has jurisdiction under 11 U.S.C. § 505(a)(2)(A) to adjudicate the portions of Douglas County's Tax Claim that were adjudicated in a state administrative tribunal prepetition; whether this Court should exercise its discretion under 11 U.S.C. § 505(a)(1) to adjudicate the balance of Douglas County's Tax Claim; and whether the price that Redwood paid for the Debtors' assets at the § 363 sale is dispositive of their value for *ad valorem* property tax purposes under Colorado *ad valorem* property tax statutory and case law; and

(2) the valuation of the Debtors' Colorado properties under Colorado *ad valorem* property tax law.

The first set of issues raise purely legal issues and can be decided without the need for expert appraisal testimony. The second issue requires extensive expert appraisal testimony by both Douglas County and the Debtors with respect to the value of several different pieces of real estate on two different valuation dates. The larger parcel of real estate contains four large retirement community apartment buildings, along with an associated clubhouse and parking structure.

“For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues.” Fed.R.Civ.P. 42(b); F.R.B.P. 7042.

There will be no need to reach the factual issues and hear expert appraisal testimony if the Court decides the legal issues in a manner that is favorable to Douglas County -- i.e, if the Court determines that under § 505(a)(2)(A), it lacks jurisdiction, and abstains under § 505(a)(2)(A) from adjudicating the legality and amount of Douglas County’s tax claim; and it determines that the price that Redwood paid for the Debtors’ assets at the § 363 sale is not dispositive of their value for *ad valorem* property tax purposes under Colorado *ad valorem* property tax statutory and case law. By the same token, if the Court decides that the price that Redwood paid for the Debtors’ assets at the § 363 sale is dispositive of their value for *ad valorem* property tax purposes under Colorado property tax law, there will also be no need to reach the factual issues and hear expert appraisal testimony.

It would be wasteful of Douglas County’s and the bankruptcy estate’s financial resources to force them to spend money on complex and expensive appraisals, when the

Court's ruling on the legal issues could obviate the need for a fact-intensive valuation trial.

Therefore, the interests of economy and expediting proceedings would be served if this Motion to Bifurcate were granted. Furthermore, neither party would be prejudiced by such bifurcation.

The orderly administration of this bankruptcy would not be compromised by such bifurcation, because the § 363 sale to Redwood has already been held and approved by this Court, and the Fourth Amended Joint Plan of Liquidation has already been confirmed. Moreover, on the Debtors' motion, the hearing on the Claim Objection has already been continued from April 27, 2010 to June 3, 2010.

Therefore, bifurcation is warranted in the interest of justice and the cost effective administration of this case. "The cost of discovery and trial preparation, including expert witnesses, may convince the court that a stay of discovery and a second trial is best."

F&G Scrolling Mouse v. IBM Corp., 190 F.R.D. 385, 390 (M.D.N.C.1999). See, Rossano v. Blue Plate Foods, Inc., 314 F.2d 174, 176 (5th Cir.1963) ("By every standard of sound administration of justice the District Court here was fully within its authority to settle the agency question first and separately."); In re Commonpoint Mortgage Company, 283 B.R. 469, 481 n. 5 (Bankr.W.D.Mich.2002) ("Rule 7042(b) gives the judge 'broad discretion to use the separate trial device in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.'"); In re Kroger, 262 B.R. 528, 531-32 (Bankr.N.D. Fla.2001). See also, Angelo v. Armstrong World Industries, Inc., 11 F.3d 957, 964 (10th Cir.1993).

Bifurcation is especially warranted where are questions on a bankruptcy court's jurisdiction in a § 505 case. See, In re Farmland Industries, Inc., 336 B.R. 415, 416 (Bankr.W.D.Missouri2005).

If the Court rules that it has jurisdiction to adjudicate Douglas County's Tax Claim and decides not to abstain from such adjudication, Douglas County will need 60 days from the Court's ruling to prepare its appraisals and produce them to the Debtors.

WHEREFORE, Douglas County prays for entry of an order bifurcating the hearing on the Claim Objection, with the first part of the bifurcated hearing to be limited to the legal issues presented in the Claim Objection, and the second part of the bifurcated hearing to be on the valuation of the Debtors' Colorado property, as adduced by expert appraisal testimony at trial. With respect to the second portion of the bifurcated hearing, the parties should be required to exchange the appraisals to which their expert witnesses will testify at trial within 60 days after the Court rules on the legal issues addressed at the first part of the bifurcated hearing.

DATED: June 15, 2010

Respectfully submitted,

OFFICE OF THE COUNTY ATTORNEY
DOUGLAS COUNTY, COLORADO

/s/ Robert D. Clark, Esq.

ROBERT D. CLARK
Colorado Atty. Reg. # 8103
Senior Assistant County Attorney
100 Third Street
Castle Rock, Colorado 80104
(303) 660-7392
Fax: (303) 668-6596
E-mail: rclark@douglas.co.us

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2010, a true and correct copy of the foregoing **Treasurer of Douglas County, Colorado's Motion to Bifurcate Claim Objection Hearing**, was filed electronically with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF systems.

/s/ Tonya McCann