



NO. S-088739
VANCOUVER REGISTRY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT,
R.S.A. 2000, c.B-9

AND

IN THE MATTER OF OKANAGAN HILLS DEVELOPMENT
CORPORATION, VINEYARD HOMES AT THE RISE LTD., THE
GOLF CLUB AT THE RISE LTD. and Y-K PROJECTS LTD.

(all referred to hereafter as "OHDC")

MONITOR'S FIFTH REPORT
July 16th, 2009

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1. INTRODUCTION

The Rise is a master planned community development with signature golf course property located within the boundaries of the City of Vernon, British Columbia. The properties are described in the Petition filed in the Supreme Court of British Columbia ("the Court") referred to below. For the purpose of this report we shall limit the description of the properties to:

1. "The Lands", being the properties slated for residential development by OHDC, and
2. the golf course referred to as "The Golf Club".

On December 15th, 2008 a Petition was filed in the Court for an order granting a stay of proceedings pursuant to the Companies Creditors Arrangement Act ("CCAA"). OHDC was the Petitioner. The Court granted the Order (the "Initial Order").

The First Monitor's Report was provided to the Court on December 23rd, 2008 ("the First Monitor's Report") for the purposes of providing information concerning the urgent need for Debtor in Possession Financing ("DIP").

On December 29, 2008, an Order was made which provided that the Petitioners were authorized to borrow up to the sum of \$2,500,000 under a DIP credit facility.

The Second Monitor's Report was provided to the Court on January 29, 2009, providing the Court information with respect to an application for an extension of the Stay of Proceedings provided for by the initial Order, and also providing information pertaining to the replacement of the DIP Financier.

The Fourth Monitor's Report was provided to the Court on June 17th, 2009, to update the Court on the financial status and other matters pertaining to OHDC and in support of an Application for further extension of the Stay of Proceedings for a period of 30 days.

The purpose of this report is to update the Court on the current financial status of OHDC and The Golf Club, and to report on the progress of the encroachment issue pertaining to The Golf Club and to support an Application for a further extension of the Stay of Proceedings to August 17th, 2009.

2. THE GOLF CLUB ENCROACHMENTS

- Leona Snider, Principal of OHDC, employed consultants Norr Architects|Planners to prepare a detailed report on resolution of actual encroachments between the development lands and The Golf Club and visa versa (see attached Exhibit "A"). In addition, Monashee Surveyors were employed to produce new and updated survey maps, detailing both sets of encroachments.
- The report was submitted to all Stakeholders on July 2nd, 2009. The charts/maps were delivered at the Stakeholder meeting deferred to July 8th, 2009.
- The meeting reported in the previous Monitor's Report to take place on July 3rd, 2009, was deferred by an agreement to July 8th, 2009.
- The meeting was attended by Chris Ramsay, Ginny Tsai, real estate counsel; Leona Snider, representing OHDC and The Golf Club; Kelly Cairns, representing Arres Capital; Alan Brown, Mr. D. King and Mr. T. Lougheed, legal counsel representing Business Development Bank ("BDC"); and George Abakhan, representing the Monitor.
- Considerable discussion ensued over the various rights of the parties, effect of the encroachments, and potential solutions to allow BDC the satisfaction to effectively charge an 18 hole golf course, yet allow maximization of the development lands owned by OHDC.
- The principal agreements, arrived at during the meeting, subject to filling in details, were as followings:
 1. The employment "blanket easements" over the OHDC Lands and The Golf Club, in favour of each other – details to be established through further discussion and identification.
 2. The establishment of "no build zones" where development lands encroach on golf land fairways, thereby allowing The Lands development to be maximized.
 3. The existing club house, including parking, to be leased for a further two (2) years after the expiry of the present lease. Copy of the existing lease to be submitted to BDC.
 4. Location of the permanent club house to be enlarged, supported by a "covenant on land". Present proposed area half an acre.

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5. Agreed that property to be made available to support a driving range, putting green, southwest of the 1st tee.
 6. The present maintenance sheds located on OHDC Lands to be leased. Agreement between the parties for an area of 2 acres. The Golf Club to retain rights to move it and a covenant on land pertaining to same, with a delineation of the area occupied. Location to be dedicated on finalization of the agreement.
 7. Concerning the 16th hole, largely on Lot 9, owned by Bella Vista Services Ltd. ("BVSL"), it was deemed necessary that a lengthy lease in the favour of The Golf Club would have to be instituted. Discussions took place in terms of 50 – 99 year lease.
 8. Pertaining to "water rights", The Golf Club to be given rights to buy excess water/rights to obtain water for temporary club house/rights to obtain water from reservoirs to be built for the new clubhouse. The parties agreed to provide all necessary documents establishing the water supply from the City of Vernon and the infrastructure pertaining thereto.
 9. OHDC would make an Assignment of Lands it encroaches on The Golf Club upon satisfactory resolution of the above points.
 10. The Golf Club would assign back surplus lands, not necessarily for the maintenance of The Golf Club, in accordance with the original loan agreements entered into with BDC, after resolution of the above items.
- The Monitor believes the above points substantially cover the main points to resolve the encroachment problem between OHDC and The Golf Club. Mr. Alan Brown agreed to set out the above in a Memorandum as a first step to fleshing out a more detailed and particularized agreement.

3. CASH FLOW AT THE GOLF CLUB

- Attached as Exhibit "B" is the Actual Cash Flow for the Golf Club (Golf Variances), compared to budget to July 3, 2009.
- Significant variances against budget are:
 - Budgeted revenue was over-stated by \$504,000 – there have been less golfers visiting the Golf Club.

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- Disbursements, including leasing costs for golf carts, GPS system, etc. were over-stated by \$563,000.
- Net surplus cash against budget was \$59,000.
- Approximately \$514,000 was made available from the DIP Financing for the period ended July 3, 2009.
- Of the \$514,000 investment made in the Golf Club, approximately \$431,000 is made up of lease payments and purchases of stock for golf shop and food & beverages, of which approximately \$90,000 remained in inventory on July 10, 2009. There is a further capital expenditure included in Contingencies for a generator and an insurance deductible paid pertaining to the collapse of a maintenance shed owing to excessive snow load.

4. MARKETING OF THE LANDS AND THE RISE

- As reported by CB Richard Ellis ("CBR"), the number of interested parties has risen to eight (8). One party which expressed a high degree of interest and indicated an imminent offer unfortunately became ill, and as such, is in abeyance.
- CBR reports that the other seven (7) parties are exhibiting considerable interest, incurring multiple visits to The Rise to review the assets.
- The recent Order to file creditor claims by July 10, 2009, will enable the parties to better assess the obligations of The Lands and The Golf Club, in the event that an offer is forthcoming.
- CBR and Leona Snider are optimistic that an offer will be made by one of the aforementioned eight (8) parties by the next Monitor's Report.

5. SUMMARY OF CREDITOR'S CLAIMS TO JULY 10TH, 2009

- Attached as Exhibit "G" is a Summary of the Claims of Creditor's filed with the Monitor and received by the expiry date of July 10th, 2009 at 5:00 p.m.
- Secured creditor claims amount to \$65,872,283.00.
- Unsecured creditor claims (excluding Inter-Company Accounts) amount to \$9,306,223.00.

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- The actual total claims filed amount of \$290,919,251.00. The excess over the sum total of the aforementioned secured and unsecured claims totaling \$215,740,744.00, are the result of cross and counter and guarantee claims, issued by the Petitioners in the course of doing business up to December 15, 2008.

6. CASH FLOW AT THE LANDS (see attached Exhibit "C")

- During the actual period to July 3, 2009, the net proceeds of a previous Lot Sale of \$68,000 was received.
- The revenue receipts were \$268,000, less than forecast, owing to the failure of the Show Home sale to go through, and a further lot that was estimated to sell in May, never sold.
- Miscellaneous receipts totaling \$159,000 reduced the negative variance, as said receipts were unbudgeted.
- Payroll and Operating Expenses were substantially less than budget, realizing savings to July 2009 of \$866,000.
- The Lands initiated a new marketing program canceling arrangements with the previous realtor and appointing a new marketing agency. To-date, the new marketing agency have generated nine (9) lot sales for an estimated net proceeds of \$1,490,000, which are subject to Court approval.

7. MONITOR, LEGAL FEES, AND DIP FINANCING COSTS

- DIP Financing costs have stabilized owing to interest having been prepaid.
- As the lot sales realize cash and are forwarded to the DIP Financier there should be an interest rebate, possibly as high as \$80,000.
- During this last period, Monitor and Legal fees were substantially in accordance with budget.

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8. **REVIEW OF THE FORECAST INCOME AND EXPENDITURES TO
SEPTEMBER 25, 2009**

- Attached as Exhibit "D" is a schedule that shows the combined actual cash flow to July 3, 2009, with a projection to September 25 2009.
- Due to a decreased number of golfers than was expected, the Golf Club has only achieved 52% of its projected revenue. However, due to a number of cost saving measures put in place by Management, the expense budget is substantially under budget, which has resulted in an operating deficit of \$514,000 to July 3, 2009, compared to a deficit of \$573,000 budgeted (see attached Exhibit "B").
- The Golf Club's original revenue forecast for the period July 17th to September 25, 2009, shows a positive cash flow of approximately \$409,000. With projected revenue of 55% of budget, the operation is projected to approximate break even, with the property taxes projected to remain unpaid (see attached Exhibit "E").
- The Monitor believes that there is sufficient cash flow (from the DIP proceeds and revenues) through to September 30, 2009. This may change if the revenue falls below the levels forecast and there are unexpected and increased professional fees pertaining to Monitor, legal and other consulting resources.
- The cash flow prepared for the Initial Application provided for approximately \$269,000 to be made available for payment of property taxes by July 2, 2009, which have not been paid.
- Concerning real estate sales, there was a prediction in the initial cash flow that 20% of forecast real estate sales would be made available to the cash flow. As mentioned above, those sales did not complete, resulting in a cash flow shortage of \$268,000.
- The above real estate sales have now been replaced by nine current sales expected to close over the next 3 to 8 weeks, realizing net proceeds of \$1,490,000.
- The Monitor requested that Pencor, the DIP Financier, allow the Golf Club and The Lands to retain 20% of the net proceeds of the sale of the above-mentioned lands for operating costs going forward. However, Pencor requested that all funds be applied against the DIP and the implementation of this cash shortage within the projected cash flow, resulted in the principals of The Golf Club and The Lands requesting that the property taxes NOT be paid.

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- All the funds authorized to be advanced under the DIP facility have been drawn down. The Monitor has \$416,706 in Trust.
- As DIP funds were drawn, interest reserve amounts were deducted totaling \$280,000. As the net proceeds from lot sales are being paid towards the DIP, an interest adjustment will be made to the credit of OHDC by the DIP Financier.

**9. PROCEEDS OF CURRENT REAL ESTATE SALES
- APPLICATION FOR VESTING ORDER**

- The DIP Financier, Pencor, has a first charge on all real estate of The Lands.
- The current lot sales are estimated to produce net proceeds of \$1,490,000.
- The net proceeds from the lot sales are to be paid to the DIP Financier to reduce the overall amount of \$2,500,000 owing.
- OHDC will be making an Application to vest the properties being sold, as per Exhibit "F", with a view to paying down the DIP and having the funds represented by a replacement DIP.

10. REPLACEMENT DIP FINANCING

- Questions have been raised by secured creditors on properties being sold as to how they recover on their first mortgage charges, because the DIP takes precedence.
- The Monitor has suggested to legal counsel that the fairest way to deal with this issue is to reallocate the priority of the DIP to the first mortgages ahead of the mortgages on other properties.
- Presuming new sales in the future, the DIP would roll through on said remaining first mortgages and subsequently second mortgages until eventually, if there is a shortage of equity for, say the third mortgages, then they would be the bearer of the resultant shortfall in the DIP.

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- The Monitor is in the process of reviewing the allocated first, second and third mortgages in order to put forward a descriptive paper to show the recommended process.
- As sales are realized, the taxes will be paid off coincidentally before any allocation to reduce the DIP and transfer the DIP priority to the remaining mortgagees.
- BDC, by Agreement/Court Order, is not party to the DIP and would therefore be unaffected.
- A preliminary review of the builders' liens filed by various creditors indicate that there is no equity for the lien holders. Accordingly, they would be classified as unsecured creditors.

11. **CONCLUSION**

The Monitor is of the opinion that the Petitioners have acted and are continuing to act in good faith and with due diligence, and that the Monitor supports an extension of the stay to August 17, 2009.

This concludes the Fifth Monitor's Report.

Should there be any questions or comments in connection with this report, or in connection with any aspect of these proceedings and the Monitor's role therein, please contact either Mr. George Abakhan or Mr. Philip McCourt at (604) 689-4255 or by facsimile at (604) 689-4277.

12. **RESTRICTIONS**

In the course of conducting our duties including the writing of this report, we have relied entirely on information supplied by management. We did not conduct procedures necessary to enable us to express an opinion on the financial information contained in this report in accordance with Generally Accepted Auditing Standards. Nor have we conducted a formal valuation of the operating subsidiaries of the Company. Projected financial information and the assumptions on which it is based are solely the responsibility of the company. Since the assumptions relate to the future they may be affected by unforeseen events, we can express no opinion as to how closely the forecasts will correspond to actual results.

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Further, since the projections and calculations are based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur and the variances may be material. Accordingly, we express no assurance as to whether the projections or calculated estimated realizations will be achieved.

Yours truly,

ABAKHAN & ASSOCIATES INC.

In its capacity as Monitor of Okanagan Hills Development Corporation,
Vineyard Homes at the Rise Ltd., The Golf Club at the Rise Ltd. and
Y-K Projections Ltd., and not in its personal capacity.

Per: 

George Abakhan, CA·CIRP
President

GA/ss

Attachments