

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:)
)
CONTINENTAL COUNTRY CLUB, CH: 11) 3:21-BK-00956-EPB
INC.)
)
1) CONTINUED STATUS HEARING IN RE:)
CHAPTER 11 CASE)
)
2) DEBTOR'S MOTION TO REJECT AMENDED)
SETTLEMENT AGREEMENT AND JUDGMENT)
)
3) WILLIAM R. SCHULZ & WM. KING, INC.) ADV: 3-21-00118
vs FAIRFIELD SUNRISE VILLAGE, INC. &)
FAIRFIELD COMMUNITIES, INC. &)
CONTINENTAL COUNTRY CLUB, INC.)
)
STATUS HEARING ON STATEMENT OF)
POSITION FOR THE LAKESIDE)
LEGIONNAIRES)
)
4) HEARING ON APPROVAL OF DISCLOSURE)
STATEMENT)
)

U.S. Bankruptcy Court
230 N. First Avenue, Suite 101
Phoenix, AZ 85003-1706

December 21, 2021
12:00 p.m.

BEFORE THE HONORABLE EDDWARD P. BALLINGER JR., Judge

VIDEO/TELEPHONIC HEARING

APPEARANCES:

For Continental Country
Club, Inc.:

Scott B. Cohen
Bradley David Pack
ENGELMAN BERGER, P.C.
2800 N. Central Avenue
Suite 1200
Phoenix, AZ 85004



APPEARANCES: (Continued)

For Continental Country
Club, Inc.:

Augustus Heywood Shaw, IV
SHAW & LINES LLC
4523 E. Broadway Road
Phoenix, AZ 85040

For Lakeside Legionnaires:

Warren J. Stapleton
OSBORN MALEDON
2929 N. Central Avenue
Suite 2100
Phoenix, AZ 85012

Proceedings recorded by electronic sound technician, Wesley
Stangret; transcript produced by eScribers, LLC.



1 THE CLERK: In the case 21-956, Continental Country
2 Club, with Adversary 21-118.

3 THE COURT: Can I have appearances, please?

4 MR. PACK: Good morning, Your Honor. Bradley Pack
5 and Scott Cohen on behalf of the Debtor, Continental Country
6 Club.

7 MR. STAPLETON: Good morning, Your Honor. Warren
8 Stapleton --

9 MR. COHEN: Good morning.

10 MR. STAPLETON: Oh, I'm sorry.

11 THE COURT: Go ahead, Mr. Stapleton.

12 MR. SHAW: Good morning, Your Honor. (Audio
13 interference) on behalf of Continental Country Club.

14 MR. STAPLETON: And good morning, Your Honor. Warren
15 Stapleton appearing on behalf of Lakeside Legionnaires.

16 THE COURT: Okay. So we've got a number of things to
17 do. First, I don't want to forget, we have to do a disclosure.
18 I always am big on disclosure.

19 So I live in a large community, as large as
20 Continental Country Club. Not 2,400 homes, but maybe about
21 half that size. And within the community are a number of
22 subcommunities. And so last week, I think, I was out walking,
23 and I go by an acquaintance of mine, a neighbor of mine, and
24 the neighbor's wife.

25 And while we were talking about that we exchanged



1 pleasantries, I think about the dogs. And so I happened to ask
2 them if they're going to be around where we live for the
3 holidays. And the response was, no, we're going to go up to
4 our long-time home up north on Lake Elaine, to which I said I
5 can't talk to you. And they acknowledged that, and we said
6 Happy Holidays or something, and continued on.

7 That person I probably see two or three times a year.
8 Don't go out with them. He's a member of the board of
9 directors of a major homeowner's association here, but I have
10 no business pending before the board of directors, and so --
11 homeowner's association -- and so there's nothing that I need
12 to solicit from him or any reason he could have any -- make a
13 decision that's adverse to me.

14 And he wasn't -- he didn't say anything. But I
15 wanted to disclose that. I can't think of any reason why I'm
16 bothered by that anymore, but if you all want to mull it over
17 and bring to my attention, I'm always happy to listen. So
18 that's that.

19 MR. COHEN: Your Honor? Your Honor --

20 THE COURT: Go ahead.

21 MR. COHEN: -- this is Scott Cohen on behalf of the
22 Debtor and Debtor-in-Possession. If Your Honor's not bothered
23 by it, we're not bothered by it.

24 THE COURT: Okay. Thank you. And so --

25 MR. STAPLETON: And Your Honor, we would second that.



1 The Lakeside Legionnaires is in the same position, Your Honor.

2 THE COURT: Okay. I just wanted to get that off the
3 table.

4 So now, let's see here. Oh. So what happened was
5 after we had our last hearing, and then I saw that there
6 were -- in accordance with my direction -- declarations filed,
7 I thought I'm not really comfortable having declarations filed
8 and not permitting an opportunity for cross-examination of the
9 declarant. So the major reason I wanted to get the call (audio
10 interference) is to provide the opportunity for us to set a --
11 I hope it would be relatively short -- a hearing to allow, or
12 permit, for example, Mr. Stapleton to cross-examine the
13 gentleman who gave the declaration on behalf of the Debtor and
14 vice versa. I know that Mr. Stapleton filed a deposition.

15 I did note that it looks like the Debtor filed two
16 declarations. I didn't read the one that was most recently
17 filed. It is identical to the one previously filed?

18 MR. PACK: No, Your Honor. I think, maybe, what
19 you're thinking of is that Mr. Held filed a declaration in
20 support of a separate motion to approve a settlement
21 agreement.

22 THE COURT: Oh, okay. Okay.

23 MR. PACK: And there were similarities between those
24 declarations. I think there may be some copy and paste, but
25 they're in support of different motions.



1 THE COURT: Okay. So only two for purposes of us
2 providing an opportunity for cross-examination. Is that fair
3 to say?

4 MR. PACK: Yes. Ours and then the one that
5 Mr. Stapleton filed on behalf of his response to our
6 declaration.

7 THE COURT: Okay. Mr. Stapleton, do you want to
8 cross? Do you want me to set a hearing so you can
9 cross-examine the declarant?

10 MR. STAPLETON: I do. And I think we've -- we've had
11 a little bit of a discussion before the hearing today about the
12 timing of that and whatnot. I'm not sure we got an agreement,
13 but we both recognize it's going to be in January, and so it's,
14 like, sort of when that's going to be. Our position is we'd
15 like the 14th or a little bit later. We just --

16 The other thing that we would like, and I think that
17 counsel are sort of working this out already, but is there was
18 a long trial in the state court, which is a matter that's now
19 before the court, and we'd like to submit some evidence that --
20 we're not sure if we want to or not yet, to be honest with
21 you -- but we'd like the opportunity to do that if it bears on
22 the issues here. And we were going to exchange that with each
23 other before the hearing, so that we don't have trial by
24 ambush.

25 But we -- in other words, but it would be something



1 that's just submitted. In other words, there's not going to
2 be -- we're not going to relitigate that and then call a
3 witness, do anything with the exhibits. If there's an
4 objection, that could be handled by this Court.

5 But in other words, to streamline the process to keep
6 this between two and four hours, I think, at the longest, with
7 probably closer to two, we just think that's something that
8 we'd like to do. And I'm not sure Mr. Pack is in agreement
9 necessarily on that, but I think there are some things that
10 they probably might want to present and that we might want to
11 present that might bare on the issue.

12 Again, they'd just be submitted. They wouldn't be,
13 like, where we're going to have extra testimony or something
14 like that. It would just be, like, you could read the
15 transcript. You could look at an exhibit that was admitted.
16 That sort of thing.

17 THE COURT: Yeah. Well, let's do it this way.
18 Let's set a time by which the parties will file a joint pre-
19 trial for that hearing. It shouldn't be much work to do that,
20 since we've only got two people that are going to be
21 cross-examined.

22 Let me also, so I don't forget, I want to reiterate
23 what we're not trying and what I'm not deciding. My
24 recollection is, and I have to admit I didn't go read the
25 papers again for preparation of this scheduling hearing, is



1 that there were three major points to the materials filed by
2 Mr. Stapleton.

3 One, that what I call the settlement agreement is not
4 executory. Two, that whether or not it is, that the covenants,
5 convictions and restrictions governing Continental Country Club
6 require that Lake Elaine be maintained as Mr. Stapleton's
7 client alleged. And three, that they brought the issue of a
8 very, very large monetary award that would result should the
9 Court permit the rejection to go forward.

10 The latter two, the amount of a potential money
11 judgment and the issue of CC&Rs, are not what I'm deciding.
12 I'm only -- those will be decided another day if they need to
13 be. I'm only deciding is this Debtor permitted to reject this
14 instrument or document in accordance with the Bankruptcy Code.
15 That's all. That's what I'm deciding.

16 So when you prepare that, please keep that in mind,
17 because I am sensitive to this case involving two groups, one
18 subsumed with the other, a large group of 2,400 homeowners and
19 a smaller group that comprises the Legionnaires group, none of
20 whom, on the facts that are agreed to, are the bad guy. It's
21 just a matter of this it that we've got. So I want to be very
22 specific about what we decide each time.

23 So if you got any questions, go ahead. Otherwise, I
24 would suggest that we have the joint pre-trial -- a very short
25 pre-trial conference, at which hopefully you all have



1 communicated with the courtroom deputy and found a date that
2 works for the hearing -- on January 18th. Or excuse me. Yeah,
3 on January 18th. Does that work for you all?

4 MR. PACK: Your Honor, this is Brad Pack for the
5 Debtor. We'd prefer the hearing sooner than later, but having
6 said that, I gather that Mr. Held is not going to be available
7 until January 10th. So the sooner we can have the hearing on
8 or after January 10th would be our preference.

9 THE COURT: Well, let me look. I'm going to have to
10 ask the courtroom deputy. Let's see.

11 When does he get back?

12 MR. PACK: January 10th.

13 THE COURT: Mr. Held? January 10th? Okay. Well,
14 that's just one week before. Okay.

15 Does the 18th work -- well, let me.

16 Priscilla, does the 18th work for us?

17 THE CLERK: Let me take a look, Judge.

18 THE COURT: Sure.

19 THE CLERK: If you're willing to do January the 13th,
20 which is Thursday, we can do an afternoon at 1:30.

21 THE COURT: Does that work for everybody?

22 MR. STAPLETON: And that's a scheduling hearing,
23 Judge? Just that?

24 THE COURT: Yes.

25 MR. STAPLETON: Yeah, that would be all right.



1 THE COURT: Okay.

2 MR. STAPLETON: Brad's been pushing me around the
3 whole case. It's fine. I'm kidding, Your Honor.

4 THE COURT: Okay. All right.

5 MR. STAPLETON: The 13th is fine.

6 MR. SHAW: Your Honor, does that work for --

7 MR. COHEN: Your Honor, this is Scott Cohen.

8 Mr. Held is on this call, I believe, and so he can consent to
9 that, participation in that hearing as well.

10 MR. PACK: Yeah, because the 13th is fine by us. It
11 works on our calendar, Your Honor.

12 THE COURT: Okay. Okay. Great. So that's what
13 we'll do. I think that's all I had.

14 Okay. Happy Holidays. Stay healthy.

15 MR. PACK: Thank you, Your Honor.

16 MR. SHAW: Thank you, Your Honor.

17 MR. PACK: And a joint pre-trial statement is due by
18 what day?

19 THE COURT: That's a good point. Two days before.
20 How about the 11th?

21 MR. STAPLETON: Also fine with us, Lakeside.

22 MR. SHAW: Yes.

23 THE COURT: Okay.

24 MR. SHAW: Okey-dokey. Thanks for your time.

25 THE COURT: Okay.



1 MR. SHAW: Happy Holidays, Your Honor. Thank you.
2 Be well.

3 THE COURT: Thank you. Bye-bye.

4 (Proceedings Concluded)

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6

7 I certify that the foregoing is a correct transcript from
8 the record of proceedings in the above-entitled matter.

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10 Dated: December 24, 2021

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