

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiffs,)

v.)

SUNWEST MANAGEMENT, INC., CANYON)
CREEK DEVELOPMENT, INC., CANYON)
CREEK FINANCIAL LLC, and JON M.)
HARDER,)

Defendants,)

and)

DARRYL E. FISHER, J. WALLACE GUTZLER,)
KRISTIN HARDER, ENCORE INDEMNITY)
MANAGEMENT LLC, SENENET LEASING)
COMPANY, FUSE ADVERTISING, INC., KDA)
CONSTRUCTION, INC., CLYDE HAMSTREET,)
and CLYDE A. HAMSTREET & ASSOCIATES,)
LLC,)

Relief Defendants,)

Civil No. 09-6056-HO

ORDER

_____)

This matter comes before the court upon the motion to approve the Proposed Distribution Plan (#537) (the "Distribution Plan") filed jointly by Michael Grassmueck, court-appointed Receiver (the "Receiver") and Clyde Hamstreet, Chief Restructuring Officer ("CRO") for Sunwest Management, Inc. ("SMI") and several hundred affiliates (as defined in the Plan, the "Sunwest Enterprise").¹

The Court established a schedule for the filing of the Distribution Plan and related pleadings and documents and the hearing on approval of the Distribution Plan and related proceedings. Pursuant to the established schedule, the Receiver and CRO filed the Distribution Plan on August 25, 2009. Also on that date, the Receiver and CRO filed their joint motion for approval of the Distribution Plan and notice of the approval hearing ((# 541), the "Motion") as well as detailed declarations by the CRO. Alvarez and Marsal advisors Matt Marcos and Paul Rundell, the Receiver, and his forensic accountant Greg Gadawski of Financial Forensics.

The Court having considered the Motion, the Proposed Distribution Plan for Interim Distribution of Assets (the "Distribution Plan"), the Memorandum of Points and Authorities, the supporting declarations, and all other supporting papers, letters and/or oppositions received in connection with the same, having taken evidence and argument at the hearing on approval of the Distribution Plan held in open court on September 23, 2009 (the "Approval

¹Capitalized terms not defined herein shall have the meaning set forth in the accompanying Proposed Distribution Plan.

Hearing"), and having issued its findings of fact and conclusions of law separately in connection therewith

HEREBY ORDERS AS FOLLOWS:

1. The Receiver's Motion is Granted, except as follows:

a) The Court reserves the determination of the scope of Third Party Claims that the Receiver shall be authorized to pursue to a later hearing to be set by the Court;

b) Approval of the HFG Settlement shall be deferred to a later hearing to be set by the Court, and the HFG Settlement shall be considered pursuant to Bankruptcy Rule 9019(a), with such HFG Settlement to be considered and ruled upon no later than confirmation of the Reorganization Plan;

c) An objection by any party to the Distribution Plan that a particular asset or interest in property should be excluded from the Federal Receivership Case and the operation of the Distribution Plan or arguing the application of an exception under the Distribution Plan, shall be deferred to a later hearing to be set by the Court, properly noticed to all parties,

to occur not later than confirmation of the Reorganization Plan;

d) Determination of the final terms of the Bare Land Election in the Distribution Plan shall be deferred to a later hearing to be set by the Court, to occur no later than confirmation of the Reorganization Plan;

e) The objection filed by the Non-Insider LLC Member Group as to the rate of interest to be paid on claims pursuant to Section IV.B.(2)(ii) of the proposed Distribution Plan shall be deferred to a later ruling by the Court, or subject to further mediation or agreement among the parties, to occur not later than confirmation of the Reorganization Plan; and

(f) Any objection to the Distribution Plan raised by secured lenders with regard to the allowance and treatment of secured claims, under the Approved Plan, or the Reorganization Plan, with regard to any terms concerning the treatment or allowance of secured claims; or payments to be made upon such claims; cure or waiver of any defaults; shall be resolved and shall be considered under sections 506 and 1129 of the Bankruptcy Code; and all remaining objections of secured lenders are overruled.

2. All other objections to approval of the Distribution Plan are overruled.

3. The Distribution Plan, as revised, is hereby approved (the "Approved Plan"). A copy of the Approved Plan is attached hereto as Exhibit "1" and all terms thereof are incorporated herein and made a part of this Order and shall be deemed enforceable as an order of this Court. Each provision of the Approved Plan is authorized and approved and shall have the same validity, binding effect and enforceability of every other provision of the Approved Plan, whether or not mentioned in this Order;

4. The court authorizes and directs the Receiver and the CRO, respectively as set forth in the Approved Plan, to take all actions necessary and appropriate to implement the Approved Plan. In particular, but without limitation, the Receiver and the CRO are authorized to reorganize the unitary enterprise recognized by the Approved Plan through the pending chapter 11 case of In re Stayton SW Assisted Living, LLC, Bankruptcy Case No. 08-36637 pending before this court, as set forth in the Approved Plan. The CRO and the Receiver are authorized to proceed with filing of any notices, motions, pleadings or other papers in the Reorganization Case necessary or appropriate to effectuate the Distribution Plan and confirm the Reorganization Plan. The Management Committee, the Tenants-in-Common Committee, the Official Unsecured Creditors

Committee and the Non-Insider LLC Member Group shall continue to serve in their official roles and capacities as previously ordered by the Court. The CRO and the Receiver are further authorized to file motions to dismiss the remaining Bankruptcy Cases. In connection therewith, notwithstanding anything in the Approved Plan or Reorganization Plan to the contrary, the CRO and/or the Receiver shall reserve the right to change the designation of any particular property among Holdco, Trustco, or Divestco at any time until confirmation of the Reorganization Plan;

5. The Court shall retain exclusive jurisdiction over all of the matters set forth in the Distribution Plan

DATED this 2nd day of October, 2009.

s/ Michael R. Hogan
United States District Judge