

SIGNED.



Dated: April 23, 2009

James M. Marlar
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	Chapter
AVC VILLA DEL LAGO AT OCOTILLO)	No. 2-08-06834-JMM
DEVCO, L.L.C., an Arizona limited)	Jointly Administered With
liability company, tka AVC)	No. 2-08-06836 and
SWEETWATER VILLAGE, L.L.C.,)	No. 2-08-06837
dba VILLA DEL LAGO,)	
Debtor.)	MEMORANDUM DECISION
AVC ESTRELLA VILLAGE DEVCO,)	
L.L.C., an Arizona limited liability)	
company, dba THE VILLAS AT)	
MOUNTAIN RANCH,)	
Debtor.)	
VILLAS AT OCOTILLO, L.L.C., an)	
Arizona limited liability company, tka)	
FOX VILLAGE VILLAS AT OCOTILLO,)	
L.L.C.,)	
Debtor.)	

There are three Debtors in these matters, and their cases are being jointly administered. Debtor, The Villas at Ocotillo, L.L.C. ("TVAO"), filed a motion against Kitchell Custom Builders ("Kitchell") seeking a turnover of property, presumably cash, in the amount of \$110,037.24 (Dkt. #126). The court, having reviewed the relevant pleadings, determines that there is no reason to hold oral argument.

1 Kitchell has responded, asserting that such sums belong entirely and exclusively to
2 it, supporting that contention with the affidavit of Larry Butler, a member of the Kitchell LLC.

3 The Debtor's motion lacks sufficient specificity to determine the merits of its
4 suggestion that Kitchell holds property belonging to it. It's allegation is too vague to support a
5 ruling, as a FED. R. BANKR. P. 9014 contested matter, because the entire allegation is only a
6 conclusion, not a statement of fact. The pleading merely states: ". . . Kitchell may be holding estate
7 property in the amount of \$110,037.24." It does not state how the Debtor arrived at such conclusion,
8 nor what the original source of such funds is, nor how it has come to pass that Kitchell is now
9 holding cash belonging to the Debtor. Nor is the allegation supported by an affidavit or other
10 evidence.

11 The insufficiency of this allegation is intensified when contrasted against Mr. Butler's
12 affidavit (Dkt. #139), which states that such funds are from the initial capitalization of Kitchell, as
13 well as retained earnings belonging exclusively to Kitchell.

14 The Debtor has filed no reply nor other evidence to either support its original
15 contention, nor to dispute the affidavit of Mr. Butler.

16 Accordingly, this motion must be DENIED, without prejudice. Should the Debtor
17 wish to pursue this point, it must do so in the procedural context of a FED. R. BANKR. P. 7001(1)(,
18 (2) and (9) adversary proceeding.

19 A separate order will be entered. FED. R. BANKR. P. 9021. The hearing set on this
20 matter for May 13, 2009, will be vacated.

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22 DATED AND SIGNED ABOVE.
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1 COPIES served as indicated below on the
2 date signed above:

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By /s/ M.B. Thompson
Judicial Assistant