

SIGNED.



Dated: July 31, 2009

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

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

<p>10 In re:)</p> <p>11 AVC VILLA DEL LAGO AT OCOTILLO)</p> <p>12 DEVCO, L.L.C., an Arizona limited)</p> <p>13 liability company, fka AVC)</p> <p>14 SWEETWATER VILLAGE, L.L.C.,)</p> <p>15 dba VILLA DEL LAGO,)</p> <p>16 _____)</p> <p>17 Debtor.)</p> <p>18 _____)</p> <p>19 AVC ESTRELLA VILLAGE DEVCO,)</p> <p>20 L.L.C., an Arizona limited liability)</p> <p>21 company, dba THE VILLAS AT)</p> <p>22 MOUNTAIN RANCH,)</p> <p>23 _____)</p> <p>24 Debtor.)</p> <p>25 _____)</p> <p>26 VILLAS AT OCOTILLO, L.L.C., an)</p> <p>27 Arizona limited liability company, fka)</p> <p>28 FOX VILLAGE VILLAS AT OCOTILLO,)</p> <p>_____)</p> <p>Debtor.)</p>	<p>) Chapter 11</p> <p>) No. 2:08-bk-06834-JMM</p> <p>) Jointly Administered With</p> <p>) No. 2-08-06836 and</p> <p>) No. 2-08-06837</p> <p>) MEMORANDUM DECISION</p> <p>) (This Filing Applies Only To Villas At</p> <p>) Ocotillo, LLC, Case No. 2:08-bk-06837)</p>
--	---

A hearing on a creditor's competing plan of reorganization (DN 146) by KCB Custom Builders, LLC ("KCB") as to Debtor Villas at Ocotillo, LLC, Case No. 2:08-bk-06837 ("Debtor"), came on for hearing on July 28, 2009. After consideration of the evidentiary record and the law, the court now issues its rulings.

1 **MOTION TO STRIKE AND OBJECTION TO LATE FILED BALLOT**
2 **OF MKA REAL ESTATE OPPORTUNITY FUND I, LLC**

3 The evidence was undisputed that MKA Real Estate Opportunity Fund I, LLC
4 ("MKA") filed its rejecting ballot late. No excuse or reason for doing so was proffered in any
5 manner. The motion to strike (DN 192) is therefore, GRANTED, and MKA's vote is disqualified
6 for voting purposes.

7
8 **CONFIRMATION OF KCB'S COMPETING PLAN**

9
10 KCB presented evidence in support of its competing creditor's plan, and was cross-
11 examined. Only one written objection was filed, that by Nikor Enterprises, Inc. ("Nikor") (DN 188).

12 The court finds that concludes that KCB's plan meets each of the relevant criteria of
13 11 U.S.C. § 1129(a). As a liquidation plan, the court finds that the \$110,000 cash contribution,
14 together with the subordination of a \$680,000 claim against the Debtor, results in creditors realizing
15 more under the plan that they would otherwise received in a Chapter 7 liquidation. § 1127(a)(7).
16 The opposing creditors maintain that the court should reject this tangible offer in favor of recently-
17 filed state court litigation. However, no evidence was tendered to support the merits of that
18 litigation, assess the probable recoveries, if any, nor weigh the risks and cost benefit of such
19 litigation. No attorney or expert witness was tendered to provide evidence as to the merits of such
20 suit. Therefore, the record is clear that this plan passes the "best interests of creditors" test.

21 The court also expressly finds KCB's plan to have been presented in good faith, and
22 that it complies with the Bankruptcy Code. § 1129(a)(1)(2) and (3).

23 An impartial disbursing agent for all of the estate's cash assets is to be Daniel P.
24 Collins ("Disbursing Agent"), who shall serve without bond, provided that all of the estate's assets
25 are maintained in a separate interest-bearing bank account, and in a banking institution agreeable
26 to the U.S. Trustee's Office. Mr. Collins shall file quarterly reports with the court, serving copies
27 thereof upon the principal parties and the U.S. Trustee, reporting activity within the account. At the
28

1 conclusion of his responsibilities, Mr. Collins should file a Final Account and Report, and KCB
2 shall seek a Final Decree. Mr. Collins' reasonable costs and fees may be paid from the account.

3 The proponent, KCB, has the vote of at least one impaired consenting class.

4 The court further finds that the plan is feasible. 11 U.S.C. § 1129(a)(11).

5 Counsel for KCB shall:

- 6
- 7 1. Lodge an order of confirmation;
- 8 2. Begin the process (with the Debtor's cooperation) of filing objections
9 to any claims that are undeserving (in whole or in part) of payment
10 under the plan.
- 11 3. Work with the Disbursing Agent to distribute the funds in accordance
12 with the priorities established by the Bankruptcy Code;
- 13 4. File such reports as are required by the U.S. Trustee, in a timely
14 fashion;
- 15 5. Move to close the estate, once a Final Decree has been entered;
- 16 6. Gather and solicit all outstanding administrative claims, and cause the
17 same to be set for hearing (if needed); or notice such applications out
18 on a "negative notice" basis; and
- 19 7. Take such other and further steps as are required and/or are necessary
20 to conclude the administration of this estate as soon as possible.
- 21

22 Finally, it will be the court's ruling that the objection to the plan filed by Nikor is
23 **OVERRULED.**

24
25 **DATED AND SIGNED ABOVE.**

1 COPIES served as indicated below on the
2 date signed above:

3 Scott R. Goldberg and Cody J. Hess
4 Schian Walker
5 3550 N. Central Ave., Suite 1700
6 Phoenix, AZ 85012-2115
7 Attorneys for Debtors

Email: ecfdocket@swazlaw.com

8 Scott B. Cohen
9 Engelman Berger
10 3636 North Central Avenue, Suite 700
11 Phoenix, AZ 85012
12 Attorneys for KCB Custom Builders

Email: sbc@engelmanberger.com

13 Jeffrey S. Leonard and James W. Armstrong
14 Sacks Tierney
15 4250 N. Drinkwater Blvd., 4th Floor
16 Scottsdale, AZ 85251-3693
17 Attorneys for KCB Custom Builders

Email: jeffrey.leonard@sackstierney.com
Email: james.armstrong@sackstierney.com

18 William A. Nebeker
19 Gregory E. Williams
20 Koeller Nebeker Carlson & Haluck
21 3200 North Central Avenue, #2300
22 Phoenix, AZ 85012-2443
23 Attorneys for AVC Villa del Lago at
24 Ocotillo DevCo, LLC

Email: nebeker@knchlaw.com
Email: gregory.williams@knchlaw.com

25 Franklin D. Dodge
26 Ryan Rapp & Underwood
27 3101 North Central Avenue, #1500
28 Phoenix, AZ 85012-2644
Attorneys for Stonegate Funding, LLC

Email: tdodge@rwrplc.com

Madeleine C. Wanslee
Gust Rosenfeld
201 East Washington, #800
Phoenix, AZ 85004-2327
Attorneys for Maricopa County Treasurer

Email: mwansless@gustlaw.com

Daniel D White
26 Corporate Plaza Drive, # 260
Newport Beach, CA 92660-7975
Attorneys for MKA Real Estate
Opportunity Fund I, LLC

Email: dan@ddwlaw.com

Larry Lee Watson
Office of the U.S. Trustee
230 North First Avenue, Suite 204
Phoenix, AZ 85003-1706

Email: larry.watson@usdoj.gov

27 By /s/ M.B. Thompson
28 Judicial Assistant