



Dated: December 22, 2008

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*Eileen W. Hollowell*

EILEEN W. HOLLOWELL  
U.S. Bankruptcy Judge

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6 **UNITED STATES BANKRUPTCY COURT**  
7 **DISTRICT OF ARIZONA**

8 In re:  
9 Ventana Del Cerro, LLC,

10 Debtor.

Chapter: 7

Case No. 4:08-bk-12351-EWH

**Findings Of Fact And Conclusions Of Law**

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12 This matter came before the Court on the Motion to Dismiss Case or Suspend  
13 Proceedings (the "Motion") filed on October 28, 2008 by Stone Springs, LLC ("Stone  
14 Springs") [DE 47]. The Court considered the filings in opposition to the Motion by the  
15 Trustee and the Debtor, as well as the declarations and exhibits filed in support of and in  
16 opposition to the Motion, and arguments of counsel at a hearing on December 8, 2008.

17 Pursuant to Bankruptcy Rule 7052 and Rule 52, Fed. R. Civ. P., the following are  
18 the Court's findings of fact and conclusions of law.

19 **FINDINGS OF FACT**

20 1. Stone Springs asserts it is the majority investor/non-managing member of  
21 Ventana Del Cerro, LLC ("Ventana Del Cerro"). Stone Springs invested \$750,000 of the  
22 approximately \$1 million capital invested.

23 2. Pathway Cerro L.L.C. ("Pathway Cerro") is the manager of Ventana del  
24 Cerro.

25 3. On August 28, 2006, Stone Springs sued Michael F. Teufel ("Teufel") and  
26 his now ex-wife, Jennifer Teufel ("Jennifer"), and Pathway Cerro in the Superior Court of  
27 Arizona in Pima County, No. C20064676 (the "Action").  
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1           4.       The defendants obtained a ruling on June 22, 2007 staying the Action and  
2 remitting it to arbitration.

3           5.       In the arbitration proceeding, No. 76-180-000032-07 (the “Arbitration  
4 Proceeding”), the arbitration tribunals of the American Arbitration Association  
5 consolidated the Action with an action by DAP Springs, LLC (“DAP Springs”) against  
6 Pathway Sabino, LLC (“Pathway Sabino”), Pathway Development, Inc. (“Pathway  
7 Development”), Pathway Holdings, LLC (“Pathway Holdings”), Raven Springs, LLC  
8 (“Raven Springs”), Teufel, and Jennifer.

9           6.       In the Arbitration Proceeding, Maureen Beyers, the Arbitrator, has ruled on  
10 motions, heard evidence, and entered rulings.

11          7.       The Arbitrator’s rulings include on July 19, 2007, appointment of Lowell  
12 Rothschild as Receiver for Ventana Del Cerro.

13          8.       On September 24, 2007, upon stipulation of the parties, including Ventana  
14 Del Cerro and Pathway Cerro, Ventana Del Cerro was dissolved, and Mr. Rothschild was  
15 appointed as Liquidating Receiver.

16          9.       On March 10, 2008, the Arbitrator directed the Manager of Raven Springs  
17 and Ventana Del Cerro to render a full and final accounting and further directed that third  
18 party investors be allowed to demonstrate their capital contributions.

19          10.       On June 17, 2008, the Arbitrator granted the interim fee application of  
20 Lowell Rothschild, Receiver, in the amount of \$11,521.70.

21          11.       On September 9, 2008, the Arbitrator scheduled the hearings on September  
22 22 and 23, 2008.

23          12.       The Receiver has liquidated Ventana Del Cerro through the completion of  
24 homes in Debtor’s development, payment of claims, and sale of the remaining property.  
25 The Receiver now holds approximately \$1.682 million for distribution.

26          13.       A disputed accounting was filed by Pathway Cerro on May 8, 2008.  
27 According to that filing, Ventana Del Cerro’s assets as of May 2, 2008 (\$1,956,771.25)  
28 exceeded its liabilities (\$302,905.89) by approximately \$1.6 million.

1 14. Pathway Cerro asserts that it holds a capital account in Ventana Del Cerro,  
2 and that Pathway Development and other Teufel affiliates are creditors. Stone Springs  
3 filed objections to the accounting on June 9, 2008. On June 17, the Arbitrator scheduled  
4 an evidentiary hearing on the accounting for September 22 and 23, 2008.

5 15. On September 16, 2008, Ventana Del Cerro filed a chapter 7 bankruptcy  
6 petition.

7 16. On September 17, 2008, Pathway Cerro also filed a chapter 7 petition.

8 17. On Sunday, September 21, 2008, Raven Springs, Pathway Sabino, Authentic  
9 Designs, LLC, Pathway Holdings, Pathway Development, and Teufel, each filed a chapter  
10 7 bankruptcy petition. The arbitration hearing was continued.

11 **CONCLUSIONS OF LAW**

12 18. Stone Springs' motion is made under 11 U.S.C. § 305(a)(1).

13 19. "The courts that have construed § 305(a)(1) are in general agreement that  
14 abstention in a properly filed bankruptcy case is an extraordinary remedy, and that  
15 dismissal is appropriate under § 305(a)(1) only in the situation where the court finds that  
16 both "creditors and the debtor" would be "better served" by a dismissal." *Eastman v.*  
17 *Eastman (In re Eastman)*, 188 B.R. 621, 624 (9<sup>th</sup> Cir. BAP 1995).

18 20. The decision whether to abstain under § 305(a)(1) is an exercise of  
19 discretion. "The analysis as to whether 'the interests of creditors and the debtor would be  
20 better served by such dismissal' is based on the totality of the circumstances. *Eastman*,  
21 188 B.R. at 624. Before a court may refrain from exercising jurisdiction over an otherwise  
22 proper case, it must make specific and substantiated findings that the interests of the  
23 creditors and the debtor will be better served by dismissal or suspension. *See In re Spade*,  
24 258 B.R. 221, 225 (Bankr. D. Colo. 2001), *aff'd*, 269 B.R. 225 (D. Colo. 2001); *see*  
25 *generally* [2 Alan N. Resnick & Henry J. Sommer,] 2 Collier on Bankruptcy, ¶ 305.02[2]  
26 at 305-6 to 305-9 [(15th ed. rev. 2005)]." *Wechsler v. Macke Int'l Trade, Inc. (In re*  
27 *Macke Int'l Trade, Inc.)*, 370 B.R. 236, 247 (9<sup>th</sup> Cir. BAP 2007).

28 21. In exercising this discretion, the Court finds that it is uncomfortable with the

1 complexity of these bankruptcy cases as opposed to the single arbitration forum.

2 Administering this case in bankruptcy would add an extra layer of cost over the arbitration  
3 and receivership that are not necessary. To the extent that Ventana Del Cerro is solvent, as  
4 urged by Stone Springs, the equity holders have a voice in the matter and Stone Springs,  
5 the majority equity holder, requests dismissal.

6 22. The Court's discretion is further influenced by the timing of the Ventana Del  
7 Cerro bankruptcy petition, which occurred shortly before the scheduled arbitration, months  
8 after the Arbitration Proceeding had been scheduled and after the Arbitrator's interim  
9 rulings that may be construed as adverse to the interests of Ventana del Cerro or its  
10 principal. It is not the role of the Court to determine the better forum for resolution of the  
11 parties' disputes. Ventana del Cerro chose the bankruptcy forum only after the arbitration  
12 agreement and Ventana del Cerro's request brought the parties to arbitration, and only  
13 after the parties and the Arbitrator had spent significant time in the process. It would be a  
14 waste of resources to change the forum to this Court, particularly in light of the  
15 Arbitrator's competence and familiarity with the matter. In addition, the history of the  
16 litigation in arbitration and in the superior court proceedings suggest to the Court that out  
17 of its respect for the state court process, dismissal should be strongly considered.

18 23. Further, the assets of Ventana del Cerro have been liquidated by the  
19 Receiver and all that remains is determination of claims and the rights of owners. If there  
20 was a lack of notice to creditors or owners before, that notice will now be provided by the  
21 Receiver. This will provide due process to the alleged creditors and alleged owners.

22 24. The Court recognizes that dismissal or abstention are extraordinary  
23 remedies, and that Stone Springs bears the heavy burden described above.  
24 Notwithstanding that burden, the Court finds, in its discretion, that the balance of factors  
25 tips in favor of and the totality of the circumstances justify dismissal of this case.

26 25. Finally, the Court notes that it did not grant Stone Springs' emergency  
27 motion for relief from the automatic stay when initially presented. Now, having  
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1 considered the facts and the arguments of counsel in due course, the Court finds, in its  
2 discretion, that the case should be dismissed.

3 Dated: \_\_\_\_\_, 2008.

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6 Hon. Eileen W. Hollowell  
7 United States Bankruptcy Judge  
8 District of Arizona  
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