



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 15, 2015

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re

American West Development, Inc.,

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

Tracy Hope Davis, United States Trustee,
Region 17,

Adversary Proceeding No.: 13-01154

Plaintiff,

**ORDER GRANTING MOTION FOR
APPROVAL OF SETTLEMENT,
PURSUANT TO 11 U.S.C. § 105 AND
FED. R. BANKR. P. 7041 AND 9019(a),
BETWEEN AMERICAN WEST
DEVELOPMENT, INC. AND THE
UNITED STATES TRUSTEE, REGION 17**

vs.

American West Development, Inc.,

Defendant.

Hearing Date: June 10, 2015

Hearing Time: 9:30 a.m.

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1 This Court, having reviewed and considered the motion (the "Motion")¹ filed by
2 American West Development, Inc. ("AWDI"), for entry of an order, pursuant to 11 U.S.C. § 105
3 and Rules 7041 and 9019(a) of the Federal Rules of Bankruptcy Procedure, approving the
4 Settlement Agreement dated as of May 8, 2015 by and between Defendant and Tracy Hope
5 Davis, United States Trustee for Region 17, no oppositions thereto having been filed, and the
6 appearances of the parties by their counsel and oral argument as noted on the record; the Court
7 having stated its findings of fact and conclusions of law on the record at the hearing on the
8 Motion, which findings of fact and conclusions of law are incorporated herein by this reference
9 in accordance with Federal Rule of Civil Procedure 52, as made applicable by Bankruptcy Rules
10 7052 and 9014; and it appearing that the relief requested is warranted on the grounds, among
11 others, that the Settlement Agreement: (a) was negotiated in good faith and is fair and equitable,
12 (b) contemplates an immediate resolution of all issues raised in the Adversary Proceeding on
13 reasonable terms; (c) avoids litigation that could prove to be protracted and expensive; and (d) is
14 in the best interests of the Debtor, its Bankruptcy Estate and creditors because it resolves all
15 issues raised in the Adversary Proceeding without the incurrence of additional expense, protects
16 the distributions already made pursuant to AWDI's confirmed and effective First Amended Plan
17 of Reorganization (the "Plan"), further protects members of Class 4 under the Plan by
18 maintaining the \$1.5 million cash funding of the Construction Defects Trust (the "Trust") despite
19 obviating the releases granted by the Future Claims Representative on behalf of members of
20 Class 4 who neither filed a proof of claim nor cast a ballot on the Plan("the Nonparticipating
21 Class 4 Members") and extending the bar of the statute of limitations by one year for
22 Nonparticipating Class 4 Members for causes of action that were within the now obviated
23 release, by further protecting members of Class 4 by making \$650,000 in additional cash funding
24 available to the Trust to pay allowed Class 4 claims in the event the original \$600,000 funding
25 for that purpose proves inadequate, and after due deliberation and sufficient cause appearing

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27 ¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the
28 Motion.

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therefor, it is hereby

ORDERED that the Motion is GRANTED; and

IT IS FURTHER ORDERED that

1. The Settlement Agreement is approved as modified on the record to amend paragraph 7 of the Settlement Agreement as follows:

7. Upon approval of the 7041/9019 Motion, Judge Zive retains jurisdiction to resolve any disagreements that may arise in relation to this Settlement Agreement, including but not limited to any remedies available to Judge Zive in the event a party attempts to breach this Settlement Agreement. Following the entry of an order approving the 7041/9019 Motion, the Bankruptcy Court will retain jurisdiction to oversee the enforcement of, determine the applicability/enforceability of, and to adjudicate any disputes and disagreements relating to this Settlement Agreement and all parties agree to the Bankruptcy Court entering final judgment thereon.

2. Debtor is authorized to take all actions contemplated by the Settlement Agreement according to the terms and provisions thereof;

3. This Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order; and

4. Notwithstanding the provisions of Bankruptcy Rules 6004 or 6006 as applicable or any applicable provisions of the Local Rules, this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply.

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1 5. The executed Waiver/Estoppel Certificate attached to the Settlement Agreement
2 as Exhibit B shall not have any impact upon the discharge of the Debtor or the injunction in
3 support of said discharge.

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5 Prepared and Respectfully Submitted by:

6 **FOX ROTHSCHILD LLP**

7 By /s/ Brett A. Axelrod
8 BRETT A. AXELROD (NV Bar No. 5859)
9 MARK J. CONNOT (NV Bar No. 10010)
10 CHARLES D. AXELROD (Admitted Pro Hac Vice)
11 3800 Howard Hughes Parkway, Suite 500
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13 *Counsel for Debtor American West Development, Inc.*

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

APPROVED/~~DISAPPROVED~~:

UNITED STATES DEPARTMENT OF JUSTICE

By: /s/Athanasios E. Agelakopoulos
 Athanasios E. Agelakopoulos, Trial Attorney
 Office of the United States Trustee
 300 Las Vegas Boulevard, So., Suite 4300
 Las Vegas, Nevada 89101
Attorney for the Acting United States Trustee

APPROVED/~~DISAPPROVED~~:

**SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation**

By: /s/Elizabeth E. Stephens
 Elizabeth E. Stephens, NV SBN 5788
 228 South Fourth Street, First Floor
 Las Vegas, NV 89101
*Attorneys for Successor Trustee of the American West
 Development, Inc. Construction Defect Settlement Trust*

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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