

Lloyd King



Honorable Lloyd King
United States Bankruptcy Judge

Entered on Docket
April 13, 2012

BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
MICAELA RUSTIA MOORE, ESQ.
Nevada Bar No. 9676
FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 262-6899/Facsimile: (702) 597-5503
Email: baxelrod@foxrothschild.com
mmoore@foxrothschild.com
[Proposed] Counsel for American West Development, Inc.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

- fdba Castlebay 1, Inc.
- fdba Development Management, Inc.
- fdba Fairmont 1, Inc.
- fdba Glen Eagles 3, Inc.
- fdba Heritage 1, Inc.
- fdba Inverness 5, Inc.
- fdba Kensington 1, Inc.
- fdba Kingsbridge 1, Inc.
- fdba Promontory Estates, LLC
- fdba Promontory Point 4, Inc.
- fdba Silverado Springs 1, Inc.
- fdba Silverado Springs 2, Inc.
- fdba Tradition, Inc.
- fdba Windsor 1, Inc.

Debtor.

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

Chapter 11

**ORDER PURSUANT TO 11 U.S.C.
§§ 105(a) AND 331, AND FED. R.
BANKR. P. 2016, AUTHORIZING
AND ESTABLISHING PROCEDURES
FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF
PROFESSIONALS**

Hearing Date: April 10, 2012
Hearing Time: 9:30 a.m.

FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)

1 The Court, having reviewed and considered Debtor's Motion (the "Motion") for an order
 2 pursuant to sections 105(a) and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*
 3 (as amended, the "Bankruptcy Code") and rule 2016 of the Federal Rules of Bankruptcy Procedure
 4 (as amended, the "Bankruptcy Rules"), authorizing and establishing procedures for the interim
 5 compensation and reimbursement of expenses of professionals, as more fully set forth in the Motion;
 6 and upon consideration of the Declaration of Robert M. Evans; and the Court having jurisdiction to
 7 consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of
 8 the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);
 9 and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper
 10 notice of the Motion having been provided; and it appearing that no other or further notice need be
 11 provided; and the Court having determined that the relief sought in the Motion is in the best interests of
 12 Debtor, its creditors and all other parties in interest; and the Court having determined that the legal and
 13 factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all the
 14 proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is
 15 hereby,

16 **ORDERED** that the Motion is GRANTED; and

17 **IT IS FURTHER ORDERED** that except as otherwise provided in an order of the Court
 18 authorizing the retention of a particular professional, the professionals specifically retained pursuant to
 19 an order of the Court in this case (collectively, the "Professionals") may seek interim payment of
 20 compensation and reimbursement of expenses in accordance with the following procedures
 21 (collectively, the "Compensation Procedures"):

22 a. Subject to the specific terms below, on or before the last day of each
 23 calendar month, or as soon as practicable thereafter (but not earlier than the
 24 15th day of each calendar month), each Professional may file an application
 25 (a "Monthly Fee Application") with the Court for interim approval and
 26 allowance of compensation for services rendered and reimbursement of
 27 expenses incurred during any preceding month or months and serve a copy of
 28 such Monthly Fee Application by overnight mail on:

i. AWDI, 250 Pilot Road, Suite 140, Las Vegas, Nevada 89119
 (Attn: Robert M. Evans);

- ii. Fox Rothschild, LLP, 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169 (Attn: Micaela Rustia Moore, Esq.);
- iii. U.S. Trustee of the District of Nevada, 300 Las Vegas Boulevard South, Suite 4300, Las Vegas, Nevada 89101 (Attn: Athanasios Agelakopoulos); and
- iv. counsel to any Committees

(each a “Notice Party” and collectively, the “Notice Parties”). Any Professional that fails to file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application for a particular month or months. All Monthly Fee Applications will comply with the Bankruptcy Code, the Bankruptcy Rules, applicable Ninth Circuit law, and the Local Rules of Bankruptcy Procedure for the District of Nevada (as amended, the “Local Rules”).

b. Each Notice Party will have twenty (20) days after service (or the next business day if the 20th day is not a business day) of a Monthly Fee Application (the “Objection Deadline”) to object to the requested fees and expenses in accordance with the procedures described in subparagraph (c) below. If no objections are raised on or before the Objection Deadline, the Professional submitting the Monthly Fee Application shall file a certificate of no objection with the Court, after which Debtor shall be authorized to pay such Professional an amount equal to 80 percent of the fees and 100 percent of the expenses requested in its Monthly Fee Application (the “Maximum Monthly Payment”). If an objection is properly filed, Debtor shall be authorized to pay the Professional 80 percent of the fees and 100 percent of the expenses not subject to an objection (the “Actual Monthly Payment”). The first Monthly Fee Application submitted by each Professional shall cover the period from the Petition Date through and including March 31, 2012.

c. If any Notice Party objects to a Professional’s Monthly Fee Application, it must, on or before the Objection Deadline, (i) file a written objection (an “Objection”) with the Court and serve such Objection on such Professional and each other Notice Party so as to be received on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection, the affected Professional may either (i) file a request with the Court for payment of the difference between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “Incremental Amount”) or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection if requested by the parties.

d. Beginning with the approximately 120-day period beginning on the Petition Date and ending on June 30, 2012, and at each 120-day period thereafter (the “Interim Fee Period”), each Professional shall file with the

FOX ROTHSCHILD LLP
 3800 Howard Hughes Parkway, Suite 500
 Las Vegas, Nevada 89169
 (702) 262-6899
 (702) 597-5503 (fax)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Court and serve on the Notice parties an application (an “Interim Fee Application”) for interim Court approval and allowance of the compensation and reimbursement of expenses sought by such Professional in its Monthly Fee Applications, including any holdbacks, filed during the Interim Fee Period, pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application must include a brief description identifying: (i) the Monthly Fee Applications that are the subject of the request; (ii) the amount of fees and expenses requested; (iii) the amount of fees and expenses paid to date or subject to an Objection; (iv) the deadline for parties other than the Notice Parties to file objections (the “Additional Objections”) to the Interim Fee Application; and (v) any other information requested by the Court or required by the Local Rules. Objections, if any, to the Interim Fee Applications shall be filed and served upon the affected Professional and the Notice Parties so as to be received on or before the 20th day (or the next business day if such day is not a business day) following service of the applicable Interim Fee Application.

e. Debtor will request that the Court schedule a hearing on the Interim Fee Applications at least once every three months or at such other intervals as the Court deems appropriate. If no Objections are pending and no Additional Objections are timely filed, the Court may grant an Interim Fee Application without a hearing.

f. Each Professional must file and serve its first Interim Fee Application on or before the 30th day following the end of the first Interim Fee Period. The first Interim Fee Application shall cover fees and expenses incurred from the Petition Date through and including June 30, 2012.

g. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses under the Compensation Procedures. Any Professional that fails to file a Monthly Fee Application or an Interim Fee Application when due or permitted will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as a Monthly Fee Application or Interim Fee Application is submitted by the Professional. There will be no other penalties for failing to file a Monthly Fee Application or an Interim Fee Application in a timely manner.

h. Neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

and

1 **IT IS FURTHER ORDERED** that notice of Monthly Fee Applications, Interim Fee
2 Applications and final fee applications (collectively, the "Applications") shall be served only on the
3 Notice Parties and that all other parties that have filed a notice of appearance with the Clerk of the
4 Court and requested notice of pleadings in this Chapter 11 Case shall receive only notice of hearings on
5 the Applications (the "Hearing Notice"); and

6 **IT IS FURTHER ORDERED** that Debtor will include all payments made to Professionals in
7 accordance with the Compensation Procedures in its monthly operating report, identifying the amount
8 paid to each of the Professionals; and

9 **IT IS FURTHER ORDERED** that all time periods set forth in this Order shall be calculated in
10 accordance with Bankruptcy Rule 9006(a); and

11 **IT IS FURTHER ORDERED** that, notwithstanding any provision in the Bankruptcy Rules to
12 the contrary, Debtor is not subject to any stay in the implementation, enforcement or realization of the
13 relief granted in this Order, and Debtor may, in its discretion and without further delay, take any action
14 and perform any act authorized under this Order; and

15 **IT IS FURTHER ORDERED** that the terms and conditions of this Order shall be immediately
16 effective and enforceable upon its entry; and

17 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction to hear and determine all
18 matters arising from the implementation and/or interpretation of this Order; and

19 **IT IS FURTHER ORDERED** that notice of this Motion as provided therein shall be deemed
20 good and sufficient notice of the Motion.

21 DATED: April 10, 2012

22 Prepared and Respectfully Submitted by:

23 **FOX ROTHSCHILD LLP**

24 By /s/ Brett A. Axelrod

BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
MICAELA RUSTIA MOORE, ESQ.
Nevada Bar No. 9676
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169

28 *[Proposed] Counsel for American West Development, Inc.*

FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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:
- 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.

###

FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)