

M E M O R A N D U M

DATE: April 18, 2013

TO: David Bullock, Town Manager
FROM: Kelly M. Fernandez, Assistant Town Attorney
THRU: David P. Persson, Town Attorney
SUBJECT: Colony Litigation Update

The following is a brief summary of the history and current status of the bankruptcy actions and state court actions involving The Colony and its controlling entities.

Bankruptcy and Ancillary Proceedings

Bankruptcy Action for Colony Beach & Tennis Club Association, Inc. (Case No. 08-BK-16972)

Chapter 11 Petition filed on October 29, 2008. The Chapter 11 Plan was confirmed on September 25, 2009. It established a five-year repayment of the Partnership's damage claim, with payments to commence upon final determination of the claim. The confirmation order was upheld by the District Court on appeal and is final and binding on the Association and the Partnership. The case also resulted in the rejection of the executory 1984 Agreement, among the Association, the Partnership, and others which purported to establish the parties' respective rights and obligations in the operation of the hotel enterprise. Case closed on November 30, 2012.

Colony Beach & Tennis Club, Ltd. v. Colony Beach & Tennis Club Association, Inc. (Case No. 08-AP-567)

Federal court litigation between the Colony Beach & Tennis Club Association, Inc. ("Association") and Colony Beach and Tennis Club, Ltd. ("Partnership") regarding the Association's obligation to assess the unit owners to pay for necessary repairs to the condominium property pursuant to the Association's governing documents and applicable agreements between the parties. The case originated in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, but was removed to the U.S. Bankruptcy Court on November 5, 2008. On November 9, 2009, the Court entered a Memorandum Opinion and Order denying the Partnership's claims for damages for breach of any duties or agreements, denying the Partnership's request to require assessments of the unit owners to fund ongoing operations of the Partnership and to pay for repairs and renovations, and granting the Association's request that the 1984 Agreement (giving the General Partner full and complete control over the operation of The Colony) be found ultra vires and unenforceable. On November 19, 2009, the Partnership appealed. On July 27, 2011, the District Court reversed, holding that the Association is responsible for common area maintenance. On October 12, 2011, the

District Court remanded the matter back to the bankruptcy court for further proceedings. As part of the remand, the District Court instructed the bankruptcy court to “either (1) vacate, amend, or issue each order necessary and appropriate to return the Partnership to possession of the Colony units and recommend an award of \$7,751,470 to the Partnership or (2) leave the Partnership without possession of the Colony units and recommend an award of \$20,646,312 to the Partnership.” On March 2, 2012, the 11th Circuit Court of Appeals dismissed an appeal by the Association appeal for lack of standing. On October 24, 2012, the bankruptcy court issued a Report and Recommendation to District Court as Instructed in Remand Order recommending that the District Court enter judgment allowing the Partnership’s claim against the Association in the amount of \$23,146,503.25 as a general unsecured claim. The Association is currently appealing an additional Order entered on October 24, 2012 which vacated the Final Judgment on Debtor’s Objections to Claim Numbers 13 and 14, Partnership’s Claims for Declaratory and Injunctive Relief, and Debtor’s Counterclaims and Third-Party Claims.

Bankruptcy Action for Colony Beach and Tennis Club, Ltd. (Case No. 09-BK-22611)

Real Property at Issue: ½ ownership interest in unit at Resort; rights to improvements made to building and common areas by Partnership; and possession and control of condominium units contributed as part of Limited Partnership Agreement

Summary: Chapter 11 Petition filed on October 5, 2009. On August 13, 2010, the case was converted to a Chapter 7 due to the Partnership’s continuing and prospective losses and likely inability to confirm a plan. On March 7, 2013, the Association filed an Objection to the Proof of Claim filed by Colony Lender, LLC, alleging the Partnership is not obligated to Colony Lender for the amounts asserted as due, the Claim was filed too late, and the Claim should be subordinated to all general unsecured claims of the Partnership. The case is still pending.

Colony Beach & Tennis Club Association, Inc. v. Colony Beach & Tennis Club, Ltd. (10-AP-00242)

Complaint for Ejectment filed by Colony Beach & Tennis Club Association, Inc. on March 1, 2010. The Complaint requested that possession of the units be turned over to the unit owners. On August 13, 2010, a Final Judgment was entered granting the request for ejectment and terminating the right of the Partnership to use the units for rental accommodations. On April 4, 2012, a Motion to Vacate the Final Judgment was filed by the Chapter 7 Trustee. On October 24, 2012, an Order Denying Motion to Vacate Final Judgment was entered. The Court stated its original ruling was not based on the ruling in Case No. 08-AP-567 (see above) which was reversed and the ejectment judgment recognized that the unit owners are no longer obligated to grant possession to an insolvent entity under agreements that are no longer in effect. The Order Denying Motion to Vacate was not appealed.

Bankruptcy Action for Colony Beach and Tennis Club, Inc. (Case No. 13-BK-348)

Real Property at Issue: Unit B (a/k/a the Locker Room Unit), Unit D (a/k/a the Meeting Room and Clubhouse Unit), Unit F (a/k/a the Men's Unit Shop), Unit G (a/k/a the Gift Shop Unit), Parcels A, B, C and D

Summary: Chapter 11 Petition filed January 11, 2013. On February 4, 2013, Colony Lender filed a Motion for Relief from the Automatic Stay and to Convert Case to Chapter 7 and/or to Dismiss Chapter 11 Case. The Motion was heard on March 22, 2013, but an Order has not yet been issued. The following two cases have been consolidated with this one for joint administration and all remain pending.

Bankruptcy Action for Colony Beach, Inc. (Case No. 13-BK-350)

Real Property at Issue: Unit A (a/k/a the Bar and Restaurant Unit), Unit B (a/k/a the Locker Room Unit), Unit C (a/k/a the Pro Shop), Unit D (a/k/a the Meeting Room and Clubhouse Unit), Unit E (a/k/a the Food and Beverage Service Unit), Unit F (a/k/a the Men's Unit Shop), Unit G (a/k/a the Gift Shop Unit), Parcels A, B, C and D

Summary: Chapter 11 Petition filed January 11, 2013. Consolidated with the preceding and following case for joint administration and all remain pending.

Bankruptcy Action for Resorts Management, Inc. (Case No. 13-BK-354)

Real Property at Issue: None (General Partner of Colony Beach & Tennis Club, Ltd.)

Summary: Chapter 11 Petition filed January 11, 2013. The preceding two cases have been consolidated with this one for joint administration and all remain pending.

State Court Action

Colony Lender, LLC v. Colony Beach, Inc., et al. (Case No. 2009 CA 006946 NC)

Foreclosure action filed on April 23, 2009. It involves five parcels known as A-E, Unit A (a/k/a Bar and Restaurant), Penthouse Unit 501, and Units F and G. Currently scheduled for a jury trial during the two-week trial period beginning on July 29, 2013.



End of Agenda Item