

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

2  
3  
4  
5  
6  
7  
8  
9  
10

ENTERED <u>9-19-11</u>
FILED
SEP 19 2011
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA
BY <u>3</u> DEPUTY

11 UNITED STATES BANKRUPTCY COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

11 In re ) Case No. 10-02937-PB11  
12 )  
12 COLONY PROPERTIES ) Jointly Administered with  
12 INTERNATIONAL, LLC, a ) Case No. 10-03361-PB11  
13 California limited liability )  
13 company, )  
14 ) CONFIRMATION ORDER  
14 Debtor. )  
15 )  
16 In re )  
17 )  
17 COLONY PROPERTIES )  
17 INTERNATIONAL II, LLC, a )  
18 California limited liability )  
18 company, )  
19 )  
19 Debtor. )  
20 )

21 Shortly after these chapter 11 cases were filed, the Court  
22 ordered the appointment of a trustee. The very experienced  
23 Richard M. Kipperman was appointed and, thereafter sought and  
24 obtained joint administration of the two cases.

25 After evaluation of the cases, their respective assets,  
26 and the claims against each, Mr. Kipperman and creditors KBR

1 Group, LLC, KBR Opportunity Fund I, LP, and KBR Opportunity Fund  
2 II, LP (collectively KBR) proposed a joint plan of  
3 reorganization. The plan drew objections from the trustees of  
4 the Nicolas Marsch estate and the Briarwood estate. Mr. Marsch  
5 and two nondebtor entities under his control, Briarwood Capital,  
6 Inc., and Colony Properties, LLC, also filed objections to  
7 confirmation.

8         Meanwhile, KBR filed objections to the claims of Briarwood  
9 Capital, Inc., and Colony Properties, LLC. Nicolas Marsch filed  
10 objections to the KBR claims.

11         Early on in the confirmation process, KBR reached  
12 settlements with former counsel for the Colony debtors, Mintz  
13 Levin, and with First Place Equities as a putative creditor.  
14 The settlements with Mintz Levin and First Place Equities were  
15 approved, while proceedings on the claim objections were ruled on  
16 in part, and continued in part. A Second Amended Plan was filed  
17 by Mr. Kipperman and KBR. Soon thereafter the Court allowed the  
18 claims of KBR over the objections of Mr. Marsch.

19         In addition to his objection to confirmation of the joint  
20 plan, Mr. Marsch, in conjunction with American Lawyers Funding,  
21 LLC, filed a competing plan of reorganization pursuant to which  
22 he essentially sought to buy the opportunity to continue to  
23 litigate. For multiple reasons stated on the record in open  
24 court, confirmation of Mr. Marsch's plan was denied.

25         The objection of the Briarwood estate, through its trustee,  
26 was resolved by the settlement concerning First Place Equities.

1 The objection of the Marsch estate, through its trustee, was  
2 orally withdrawn in open court after approval of the settlement  
3 between the Marsch trustee and KBR.

4 The remaining objections are those of Mr. Marsch and his  
5 nondebtor entities. The primary objections, including lack  
6 of impaired class voting for the plan, were predicated on  
7 Mr. Marsch's position that KBR's claims were invalid. Those  
8 objections were disposed of by the allowance of KBR's claims.  
9 Mr. Marsch also objected to the separate classification of  
10 Classes 3, 4 and 5 under the Plan. Class 5 consisted of the  
11 claim of First Place Equities. As noted above, that claim has  
12 been settled. Under the Second Amended Plan, Classes 3 and 4  
13 are treated the same as other unsecured creditors, thus rendering  
14 moot the classification objection. This amendment also addressed  
15 Mr. Marsch's argument that the Plan was not fair and equitable  
16 with respect to Classes 3 and 4.

17 Mr. Marsch had also argued that the release provisions under  
18 the Plan were too broad, releasing claims that did not belong to  
19 the Colony Debtors. Under the Second Amended Plan, it has been  
20 made clear that only those claims belonging to the Debtors are  
21 released.

22 Finally, Mr. Marsch, and others, objected to confirmation on  
23 the ground that the joint plan was proposed without a disclosure  
24 statement. Though rare, such a procedure is not unheard of.  
25 See e.g., In re Union County Wholesale Tobacco & Candy Co.,  
26 8 B.R. 442 (Bankr.D.N.J. 1981). The purpose of a disclosure

1 statement is to give parties in interest, whose votes are being  
2 solicited, adequate information about the plan. See Bankruptcy  
3 Code § 1125(a) & (b). In the case at hand, however, no votes  
4 were solicited. Under the terms of the joint plan, finalized as  
5 the Second Amended Plan, general unsecured creditors will be paid  
6 in full and are unimpaired, and thus are presumed to have  
7 accepted the plan. Conversely, the equity holders will receive  
8 nothing, and are deemed to have rejected. Finally, KBR is  
9 impaired, but as plan proponent accepts the plan. Accordingly,  
10 the Court finds that the lack of disclosure statement in this  
11 case is not a bar to confirmation.

12 The objections to confirmation have all either been settled,  
13 resolved by the allowance of KBR's claim over the objection of  
14 Mr. Marsch, overruled as set forth above, and/or mooted by the  
15 modifications in the Second Amended Plan. Confirmation of the  
16 competing plan proposed by Mr. Marsch has been denied for the  
17 reasons explained by the Court at the August 22, 2011 hearing.

18 Finally, the Court has independently reviewed the Second  
19 Amended Plan and finds that it meets the requirements set forth  
20 in Bankruptcy Code § 1129(a)(1) through (16) and (b)(1).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 For all of the reasons set forth above, the Court hereby  
2 orders that the Second Amended Plan may be confirmed. Counsel  
3 for KBR shall lodge a confirmation order consistent herewith.

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

IT IS SO ORDERED.

DATED: SEP 19 2011



---

PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court