



1 significant factors concerned Mr. Marsch's conduct and testimony  
2 in this case and in a case in Colorado Bankruptcy Court involving  
3 MRP as the debtor.

4 MRP was an entity wholly owned by Mr. Marsch and the primary  
5 asset of MRP is a luxury ski villa in Avon, Colorado appraised in  
6 April 2009 at \$10,000,000. Shortly thereafter, Mr. Marsch  
7 purportedly transferred his interest in MRP to Mr. Sachs and to  
8 an entity named www.DegreeFraud.com LLC. The trustee in this  
9 case, as well as Lennar and the KBR creditors contend the  
10 transfer was fraudulent, either as actual fraud or constructively  
11 fraudulent because Mr. Marsch received substantially less than  
12 reasonably equivalent value for the transfer. All assert that  
13 the transfer is avoidable. The central issues are 1) whether the  
14 estate would prevail on an avoidance claim; and 2) how much would  
15 the estate recover from the transferees. MRP is in its own  
16 Bankruptcy in Colorado, with the senior secured creditor looking  
17 to foreclose.

18 The trustee of this estate seeks approval of a settlement  
19 and release of all claims of the estate as against MRP, Mr. Sachs  
20 and www.DegreeFraud.com LLC. The Marsch estate would receive  
21 \$375,000, plus \$50,000 for compromise of claims asserted by the  
22 Colony debtors.

23 The trustee is between the proverbial rock and a hard place.  
24 The estate has no liquid assets with which to investigate, much  
25 less litigate claims the debtor asserts it has against anyone,  
26 whether MRP, Lennar, KBR or others. So the trustee quite

1 reasonably seeks to resolve one of those claims, both to put it  
2 to rest and to generate a fund to draw on to perform the  
3 trustee's task of investigating and liquidating the claims of the  
4 estate against third parties, such as Lennar.

5 Lennar opposes the trustee's proposed settlement on several  
6 grounds, foremost of which is that Lennar asserts the claims  
7 against Sachs, www.DegreeFraud and MRP are worth significantly  
8 more than the amount of the settlement. In support, they offer  
9 the \$10 million appraisal from April 2009, as against the then-  
10 existing secured debt of approximately \$6.1 million plus the  
11 consideration Mr. Marsch received at the time of the transfer,  
12 which supposedly was \$850,000 or \$950,000 plus credit against  
13 pre-existing debt of \$500,000.

14 The trustee makes it clear that he does not want MRP back  
15 because more recent appraisals indicate the property's value may  
16 have dropped to \$7.5 million which, while it may not defeat the  
17 fraudulent transfer claim, would provide for little or no net  
18 return. So any claim pursued would depend on the trustee  
19 establishing a value at the time of transfer and the right to  
20 recover the amount of that value, less the secured debt and the  
21 consideration Mr. Marsch received at the time. And, as already  
22 noted, the trustee has no funds with which to pursue such claims.

23 Lennar has responded much more broadly by proposing a plan,  
24 jointly with KBR, that promises unsecured creditors a minimum net  
25 distribution of \$450,000, after administrative expenses, for the  
26 claims against MRP, Sachs and www.DegreeFraud. Lennar does not

1 propose, directly, to buy and pursue the claim. Rather, they  
2 propose after plan confirmation appointment of a plan  
3 administrator of their choosing, who would pursue the claims  
4 against Sachs, www.DegreeFraud and MRP. If, after 6 months, the  
5 Administrator has not recovered at least \$450,000 after expenses,  
6 Lennar will make up any shortfall to bring the net total  
7 available for distribution to unsecured creditors to \$450,000  
8 (it is not clear to the Court whether those funds would come from  
9 the proposed Lennar loan of \$750,000, or whether they would be  
10 counted as additional loaned funds, or would be a promised  
11 contribution).

12       Looking just at the MRP transaction, Lennar's proposal  
13 offers more because it offers to fund the expense of litigating  
14 the claims while promising the creditors a share of at least  
15 \$450,000, with the possibility of more if the net recovery after  
16 expenses exceeds that amount. If that were a stand-alone  
17 proposal by Lennar, the motion would be relatively easy to  
18 decide. But it is not a stand-alone proposition. Rather, it  
19 is bundled in the larger proposal of the joint plan for the  
20 individual Marsch chapter 11 case, the Briarwood Capital chapter  
21 11 case, and the two pending Colony cases. At the center of  
22 the plan is a loan from Lennar of \$750,000, repayable at 10%  
23 interest, which would be used by the proponents' hand-picked  
24 plan administrator to pursue Mr. Marsch, Briarwood and anyone  
25 else who might be vulnerable to claims of the bankruptcy estates,  
26 including MRP, Mr. Sachs, and www.DegreeFraud.com, LLC. While

1 unsecured creditors of Marsch would receive *pro rata*  
2 distributions from the Lennar-guaranteed \$450,000, under the  
3 plan Lennar would have an allowed \$20 million claim and KBR a  
4 \$5 million claim. Each would receive a distribution of 35% of  
5 the minimum \$450,000 and the remainder of the unsecured creditors  
6 would participate in the remaining 30% of the pot. For the loan  
7 of up to \$750,000 plus the guaranteed \$450,000, Lennar and KBR,  
8 and their related entities would receive full and complete  
9 releases.

10       The trustee's response is that the price for Lennar's  
11 proposal is too high, especially since the trustee has no  
12 resources to evaluate what the estate would be giving up. That  
13 would take an expensive assessment of the merits of the state  
14 court litigation, the possibility of success on appeal standing  
15 in the shoes of Marsch and Briarwood Capital, and the prospects  
16 of a retrial even if successful on appeal. Phase one took  
17 approximately 11 months of trial. Lennar points out on the flip  
18 side that if the settlement were approved as proposed, some  
19 portion of the proceeds would go to pay administrative expenses  
20 already incurred, and much more to the due diligence assessment  
21 the trustee urges is necessary. The net proceeds of the MRP  
22 matter would be significantly reduced, and if the trustee is  
23 unable to identify further assets to be liquidated, or even if  
24 identified could not support the cost of pursuing them, then the  
25 general unsecured creditors would receive little if any  
26 distribution, as contrasted with participation in the \$450,000

1 guaranteed pot - in reality a \$135,000 pot since the plan  
2 proponents Lennar and KBR would receive 70% as their share,  
3 leaving 30% of the \$450,000 for the other general unsecured  
4 creditors.

5       As already noted, the trustee is between a rock and a hard  
6 place. He has no funds with which to conduct litigation or a  
7 due diligence investigation of the other claims of Marsch and  
8 Briarwood Capital to see if there is a reasonable prospect for  
9 a meaningful recovery for the benefit of creditors. Yet the  
10 trustee is quite reasonably unwilling to accept the price Lennar  
11 and KBR are offering to pay without having a much clearer picture  
12 of what the bankruptcy estate would be irrevocably giving up for  
13 the net minimum of \$135,000. Lennar and KBR, in turn, say that  
14 if the settlement is approved, the \$450,000 (a net \$135,000)  
15 guarantee goes away, the proceeds the trustee receives will be  
16 drawn down for past and future administrative expenses, and both  
17 Lennar and KBR will press their full claims against the estates  
18 which, if successful, would capture 99% of the unsecured creditor  
19 debt, rather than the 70% they agree to accept under the plan.  
20 There would be little or no distribution for other unsecured  
21 creditors if the settlement is approved unless the trustee comes  
22 up with some as-yet unidentified new source of income for the  
23 estate.

24       The Court is mindful that Mr. Marsch filed the instant  
25 petition on or about February 25, 2010. Four weeks later, KBR  
26 moved for appointment of Chapter 11 trustees in all four cases,

1 Marsch, Briarwood Capital, Colony Properties Int'l, LLC and  
2 Colony Properties Int'l II, LLC. On April 19, Lennar filed a  
3 44 part support of KBR's application, and Marsch filed his  
4 opposition. On April 26, both KBR and Lennar filed replies to  
5 debtors' oppositions, and on April 30 debtor filed a surreply.  
6 A trustee was appointed for the Colony Properties cases, but  
7 not for Marsch and Briarwood. Then, on July 12 Lennar filed a  
8 voluminous supplemental statement in support of KBR's motion,  
9 the debtor filed an opposition and, by order entered July 19  
10 the Court ordered trustees appointed in Marsch and Briarwood.

11 Since that time, as far as the record reveals, the trustee  
12 has approached Lennar to provide some sort of funding to enable  
13 the trustee to perform his statutory duties his appointment  
14 requires of him. Notwithstanding that Lennar and KBR sought the  
15 appointment of the trustee, it appears they have been financially  
16 starving him unless he would agree to an approach which included  
17 releases for them. In other words - and the Court is only  
18 drawing permissible inferences here - Lennar and KBR, to the  
19 extent they would agree to any funding at all, would not agree  
20 to its use to assess the value of any of the estate's purported  
21 claims against them. That is not a totally unreasonable position  
22 on their part, but it has effectively hamstrung the trustee from  
23 investigating much of anything.

24 So, for very good reason, the trustee has sought, and  
25 negotiated, a possible resolution of the MRP matter, which would  
26 yield cash to the estate with which the trustee could perform

1 his statutory obligations to all the creditors, not just Lennar  
2 and KBR, although their claims if allowed would dwarf those of  
3 the other unsecured creditors. Now, Lennar and KBR oppose that  
4 settlement, and proffer a plan in which, as discussed, they would  
5 receive full releases for loans to the estate to fund  
6 investigation and litigation by their chosen plan administrator,  
7 in every direction but their own. Lennar asserts it has incurred  
8 over \$50 million in fees and costs in "The Bridges" litigation,  
9 which it expects to be awarded by the Superior Court. Their  
10 maximum exposure under the plan is the \$450,000 guarantee plus  
11 the loan of up to \$750,000, repayable with interest if anything  
12 is recovered. For them, it is a very small exposure for full  
13 releases from all claims which may be asserted by the debtors'  
14 estates.

15 For the foregoing reasons, the Court finds and concludes  
16 that the trustee has exercised not only sound business judgment,  
17 but also a strong commitment to the integrity of the bankruptcy  
18 process in service to all the creditors of the estate, as well  
19 as to the debtors. Under the circumstances set out above,  
20 the Court finds the price of Lennar and KBR's proposed plan  
21 to be too high against the objectives of the bankruptcy process.  
22 The Court has no crystal ball and cannot foresee how the  
23 cases will end. In the near term, however, it is in the best  
24 interest of the estate that the trustee have the opportunity to  
25 examine the assets of the estate pursuant to his duties under  
26 11 U.S.C. § 1106. Lennar's plan proposal for the MRP matter

1 offers other creditors a relative pittance of a guaranteed net  
2 \$135,000 as against the performance of statutory duties by a  
3 trustee they sought to put in place but then handcuffed with no  
4 funds.

5 Accordingly, the Court advises the parties that unless some  
6 agreement more preferable to all the creditors of the estate is  
7 reached between the parties and the trustee, the Court will sign  
8 an order on January 10, 2011 authorizing the trustee to enter  
9 into the settlement on the MRP, Sachs and www.DegreeFraud.com LLC  
10 matter, on the terms noticed by the motion. Counsel for the  
11 trustee shall prepare and lodge promptly an order consistent with  
12 the foregoing, which the Court will hold until January 10, 2011  
13 before signing and filing it if no such agreement is reached.

14 IT IS SO ORDERED.

15 DATED: DEC -2 2010

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18 PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court

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