

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Colony Beach and Tennis Club, Ltd., Debtor

CASE: 8:09-BK-22611- KRM

CHAPTER 11 TRUSTEE REPORT

Submitted by William Maloney CPA, CVA

July 22, 2010

Colony Beach and Tennis Club, Ltd., Debtor

CASE: 8:09-BK-22611- KRM

CHAPTER 11 TRUSTEE REPORT

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Colony Beach and Tennis Club, Ltd., Debtor

CASE: 8:09-BK-22611- KRM

I N D E X

REPORT

Preliminary Conclusion

Establish Control Over the Debtor

Continue to Operate Hotel

Review Case History

Financial Department and Internal Control System

Restructuring Plan Sponsors

Remaining Work Plan

Other

EXHIBITS

Order Approving Appointment of Chapter 11 Trustee **A**

Bond Posted On Behalf Of Trustee **B**

Affidavit of Barrie Wilkie – Colony employee **C**

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In Re: Colony Beach and Tennis Club, Ltd.,

CASE: 8:09-BK-22611- KRM

Debtor:

TRUSTEE REPORT

Preliminary Conclusion

It is certain that Colony Beach and Tennis Club, Ltd. ("Colony") will ultimately be restructured in a new form, either as a condo-hotel, timeshare/fractional units/shared ownership, or other model. I have identified, met with or spoken to 13 groups who have expressed a genuine interest in participating as a sponsor in a restructuring plan for Colony. I believe many of the plans are professional, feasible and several – but perhaps not all - likely financial capacity to fund a restructuring.

Unfortunately, no plan has a strong prospect of success without the cooperation and support of one of the significant players, the Colony Association (the "Association"). I have NOT been successful in achieving a commitment on their part to consider any plan. It seems clear to me, the Association's agenda is to force a liquidation of Colony so as to terminate the partnership and gain control of Colony's property and any plan to restructure.

I believe, if the Association were willing, a plan could be negotiated amongst all the interested parties. I am aware there have already been two failed mediation attempts. I believe a consensual restructuring is preferable rather than continuing to "gore the ox".

The Debtor has a few assets, primarily condo unit furnishings, (subject to a lien, which I consider to have little, if any, value) and the contractual rights to use the condo units for 335 days of the year. This right will vanish unless the debtor can confirm a plan, which in my view, can only happen with a successful mediation. The Association claims to hold the lion's share of the unsecured claims asserted against the estate, and is the rightful beneficiary of the claims, if any, under the Directors and Officers insurance policy. There do not appear to be any meaningful assets that could be administered by a Chapter 7 Trustee. Therefore, in the absence of a commitment by all constituents – including principally the Association – to participate in a mediation in good faith, I recommend the Chapter 11 case be dismissed.

Following are details of the work I performed as the Chapter 11 Trustee since my appointment on June 11, 2010.

Establish Control Over The Debtor

On June 12, 2010, I met counsel for the debtor, Roberta Colton, and Dr. Klauber at the resort. I took possession of the records in Colton's possession, and toured the facility.

Promptly thereafter, I took possession of the bank account, changed signatories, interviewed key employees, and gained access to the computer system.

I implemented a procedure where ALL disbursements are approved by me and I review and approve each and every payment made by the debtor. I am particularly sensitive to the allegations of self dealing by the General Partner, Klauber, and pay particular attention to allocated amounts and propriety of charges to the debtor. I have not witnessed any improper positioning in the business dealings by the Klauber entities.

Continue to Operate Hotel

After carefully evaluating the debtor's business and consulting with resort personnel, I decided to continue to operate the hotel as long as we could achieve a break even financial result. Based on reservations booked and past seasonal trends it appears the month of July will likely be a strong month. I have decided to continue to operate the resort until at least early August 2010. I felt this was especially important to retain whatever intangible value exists for the resort, provide me an opportunity to assess the case, and protect the property and units owned by Association members to the extent there are still 7 of 18 buildings open and maintained.

On a daily basis I review operating reports of the hotel operation and work closely with Katie Moulton, resort manager, who I decided to retain during this interim period, (although Ms. Moulton is serving without pay). All important hotel decisions are made by me. I decided to continue with the July 4th fireworks and to issue a summer promotion, with the sole purpose of increasing room occupancy in July. At latest count we have over 1,000 room night reservations in July, which is a fairly strong showing. I opened a separate bank account to hold deposits for guests that book periods after August 7, with the intention of refunding deposits, subject to court approval.

Review Case History

I reviewed more than 1,000 pages of documents including transcripts, debtor records, correspondence, and financial reports. I met with counsel for parties in interest; Mr. Warren, Ms. Colton, Mr. Bartlett, Mr. Hall, Mr. Guso. I met with former debtor representatives Dr. Klauber, Ms. Moulton. I met with representatives of the secured lender Mr. Siegel, Mr. Langley. I had lengthy discussions with Mr. Yablon, Mr. Erasmus, and Mr. Israeloff, who representatives of the Association board. All were very cordial and expressed a willingness to help, while clearly advancing their respective interests.

Financial Department and Internal Control System

I met and interviewed each of the finance department personnel:

- Richard Kelley - Controller
- Dianne Bell- General Accounting – A/P, A/R, Cash, Deposits, Credit Cards, Night Audit, House Accounts, Package Accounts
- Gwen Mooney– Human Resources, Payroll, accounting assistant
- Barrie Wilkie- Executive Office assistant and owners representative, accounting assistant, accounts payable disbursements.
- Bill Hall – Part time court approved temp – Closing books (complete through 9-2009), intercompany account reconciliation, payroll and sales tax returns, cash account reconciliations
- David Compton – Former Controller (courtesy answerman)

I reviewed the daily procedures performed by each staff person. I did a “walk through” of the transactions processed in each area. I shadowed the night audit process, hotel receipts collection and booking. I reviewed in detail the allocations made between Colony and Colony Inc., the Klauber controlled entity. After review, I decided to increase the allocation of the cost of the Controller position from 25% to 50% to Inc., due to the significant increase in C.O.D. transactions of the restaurant which is operated by Inc. I also reviewed the accounting records on the ACCPAC system and reviewed several monthly closing binders. I reviewed the September 2009 trial balance in detail.

Having learned about accusations of self dealing by the General Partner, I carefully reviewed the accounting process and allocations to ensure the interests of the debtor are protected. Generally, I found the finance area did not receive a lot of oversight and suffered a general condition of neglect, rather than a spurious effort to deceive the debtor

or its creditors. I cannot speak to former or previous conditions, however, this is what I observed in my investigation.

I decided to terminate the Controller. I felt he was not well equipped to handle the challenges he faced and appointed Rich Noworyta, a finance professional I know personally and have worked with before. Mr. Norworyta took over the function on July 7, 2010. Norworyta continues to handle all Klauber companies' activities at the revised allocation above. Norworyta was hired in the normal course as a joint employee with Gevity, our PEO, and is paid the same rate the former employee Kelley was paid.

The systems at Colony use MICROS as the point of sale system for the restaurant and café and OPERA as the lodging management package. Both products are part of the MICROS family which is important as it enables data migration across platforms.

The accounting system used is ACCPAC. This is not a robust system and does not enjoy a very favorable reputation as an accounting package. It is comparable to Quickbooks or Peachtree. The ACCPAC product is dated and has never been fully developed to use the functionality of the software, nor has the "Crystal Reports" report writer been utilized to develop resort financial reports. Unfortunately, much of the accounting information is re-input into excel where the data is manipulated into management oriented report formats. While this achieves the "end goal" of financial reports it is inefficient and takes more time.

One of the root problems in this case, is that the entities are co-mingled in the accounting system. While the different companies are using separate established companies ledgers in the system, the general ledgers of each entity do not use a common chart of accounts, so ease of maintaining records and coding causes inefficiency and delay. I have instructed the Controller to discontinue use of ACCPAC effective with Oct 2009 processing except for use in accounts payable processing. All financial information post petition will be processed on desktop excel systems and will be cash based without traditional monthly accruals.

Restructuring Plan Sponsors

I have discussed, met with and reviewed proposals from 13 different groups. Each group has a slightly different approach but in general all groups propose a condo-hotel, timeshare or a blend of these concepts. Some of the groups are familiar to the court, some are not. Those that propose a condo-hotel feel that timeshares have gone the way of the leisure suit. Those that sponsor a timeshare claim a condo-hotel is not financially feasible. Perhaps not all, but many of the groups I believe can deliver the funding commitments needed to confirm a plan. I have been told by some parties that funding was not lined up for some of these sponsors, however, I believe in a few cases, the sponsors have been able to find funding commitments they may not have had earlier.

Following is a recap of the groups with whom I have met or held discussions:

- Coral Hospitality
- MW Development
- Bill Hitson
- Harper Sibley
- Colony Lenders
- Rusovich Group
- Midlan International
- Steep Rock Capital
- Zuccarello Group
- Charley Aker
- Glenn Miller
- Bob Shleider
- TENCON

If the Association would consent to participating in another round of mediation, or if the court so ordered, I would propose each player be qualified with an affidavit as to financing capability and invited to submit their proposal and participate as a party at the mediation. In collaboration with the Association and other key constituents, I would select the highest or best proposal as the basis for advancing a plan of reorganization or other transaction that will result in the best resolution for this case.

Remaining Work Plan

I intend to discontinue the hotel operations as early as August. Notwithstanding the strong opposition by the Association, I am hopeful that Klauber is able or willing or can be compelled to continue to provide amenities (i.e. restaurant, snack shop, pool/tennis) to hotel guests until the operations are discontinued. The shutdown will require preparation, a detailed shut down plan, and a security plan to protect assets until the court appoints a Chapter 7 trustee or orders a dismissal of the case.

I intend to keep the controller and contract finance resource until the books are closed through the current month, the intercompany account is reconciled, and the bank account is reconciled. I will evaluate whether there are other assets of the estate that I have not identified. I am familiar with the allegation that the General Partner distributed some \$13 million from the partnership, but have not conducted an investigation nor made an evaluation as to whether a cause of action against the General Partner exists – or whether such a claim is collectable if proved. In the event of a conversion or dismissal, a party in interest would need to advise the court if they seek to fund and pursue such an effort.

Other

It was brought to my attention by counsel for the Association that suspected spoliation activities occurred shortly before my arrival. I investigated the allegations and concluded no key documents of the debtor were destroyed. Attached is an affidavit from the involved employee.

This concludes my report.

William Maloney

Chapter 11 Trustee

June 22, 2010

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Colony Beach & Tennis Club, Ltd.

Case No. 8:09-bk-22611-KRM

Debtor.

ORDER APPROVING APPOINTMENT OF CHAPTER 11 TRUSTEE

THIS CAUSE came on for consideration on the United States Trustee's Application for Approval of Appointment of William Maloney as Chapter 11 Trustee in the above-styled Chapter 11 case. Upon consideration of the record, the Court finds that Mr. Maloney holds no interest adverse to the estate, has no connections to the Debtor, creditors, any other party in interest, and that his appointment would be in the best interest of the estate. Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the United States Trustee's Application For Order Approving Appointment of Chapter 11 Trustee be, and the same hereby is, granted, and the appointment of William Maloney is hereby approved.

DONE AND ORDERED in chambers in Tampa, Florida on
June 11, 2010

K.R.M.

K. RODNEY MAY
U.S. Bankruptcy Judge



**BANKRUPTCY DEPOSITORY BOND IN FAVOR OF THE UNITED STATES
(11 U.S.C. § 345)**

Bond #: 964010974

KNOW ALL MEN BY THESE PRESENTS:

That we, William Maloney (the "Principal"), with its principal office at 200-2nd Ave South #463, which acts as a depository bank for certain funds of bankruptcy estates administered under St Petersburg, FL 33701 chapters 7, 11, 12, or 13 of title 11 of the United States Code (the "Bankruptcy Code") in the United States District Court for the Middle District of Florida Tampa Div including the United States Bankruptcy Court for said district (collectively, the "Court"), as Principal, and Liberty Mutual Insurance Company (the "Surety"), with its principal office at 1051 Winderly Road Ste 105 Maitland, FL 32751 duly authorized to transact business in the state of Florida, as Surety, are held and firmly bound, in conformity with 11 U.S.C. § 345, unto the United States of America in the aggregate penal sum of Five hundred thousand Dollars No/100-dollars (\$500,000.00), for the payment of which, well and truly to be made, we bind ourselves, our heirs, excutors, successors, assigns, and our administrators, jointly and severally, by these presents.

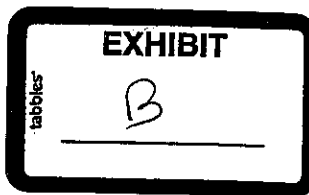
THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, certain persons serve as trustees in cases arising under chapters 7, 11, 12, or 13 of the Bankruptcy Code (the "Trustees"), and certain persons remain in control of estates in certain reorganization cases under chapter 11 of the Bankruptcy Code (the "Debtors-in-Possession"); and

WHEREAS, certain Trustees and/or Debtors-in-Possession have asked the Principal to act as a depository for certain monies belonging to the bankruptcy estates being administered in the cases pending before the Court; and

WHEREAS, the Principal and the Surety must comply with 11 U.S.C. § 345;

NOW THEREFORE, the condition of the above obligation is such that if the Principal shall faithfully account for and repay all monies deposited with the Principal, as a depository for monies belonging to the bankruptcy estates being administered by the Trustees and Debtors-in-Possession in bankruptcy cases pending before the Court, and if the Principal also shall faithfully fulfill all of its obligations under 11 U.S.C. § 345, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:



1. In the event of the failure of the Principal to satisfy the conditions above during the period of this bond ("Default"), the United States Trustee, on behalf of the United States of America, shall make reasonable efforts to provide written notice to the Surety to:

Liberty Mutual Insurance Company
Attention: Claims
1051 Winderly PL Ste 105
Maitland, FL 32751

Failure to provide notice shall not constitute a waiver of the United States' rights or the rights of those on whose behalf the United States may be acting.

2. The Surety need not make payment under this bond on that portion of any deposit held by the Principal that is paid by the Federal Deposit Insurance Corporation as a deposit pursuant to title 12 of the United States Code.
3. The Surety may cancel this bond at any time by giving ninety (90) days notice in writing by registered mail to the United States to:

United States Trustee
Region 21
Donald F. Walton
501 East Polk St., Ste 1200
Tampa, FL 33602


In the event such notice is sent, the Surety's liability under this bond shall terminate at the expiration of ninety (90) days from the date of receipt of such notice, but such termination shall not relieve the Surety of liability for Defaults arising prior to the effective date of such cancellation.

The Principal and the Surety agree that they shall not amend, modify, or vary any term of this bond, including, but not limited to, the amount of the penal sum, without the prior written consent of the United States Trustee for Region 21.

The Surety hereby represents and warrants that it is an acceptable Surety under, and is in full compliance with, sections 9304 and 9308 of title 31 of the United States Code and Treasury Department Circular 570. Surety hereby binds itself to notify the United States Trustee for Region 21 immediately if, for any reason, it should cease being in full compliance with either section 9304 or 9308 of title 31 of the United States Code or with Treasury Department Circular 570.

Signed, Sealed and Dated this 14th of June, 2010.

By: _____
President [of the Principal]
William Maloney

By: 
[Attorney-In-Fact [of the Surety]]
Shari Livingston

2353227

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint JOHN K. RITENOUR, MARK A. MANFRE, VALLI S. RITENOUR, MARSHA L. WENDT, ANSGAR S. GUFFEY, SHARI LIVINGSTON, ALL OF THE CITY OF LONGWOOD, STATE OF FLORIDA

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO MILLION AND 00/100 DOLLARS (\$ 2,000,000.00) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 9th day of June 2008

LIBERTY MUTUAL INSURANCE COMPANY



By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 9th day of June, 2008, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires Mar. 28, 2009
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 14th day of June, 2010.



By David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



MEMORANDUM

TO: Bill Maloney, Trustee
FROM: Barrie Wilkie, Owner's Rep & Executive Assistant
DATE: July 16, 2010
RE: Colony files

A handwritten signature in cursive script, which appears to read 'Barrie Wilkie', is written over the 'FROM' and 'DATE' lines of the memorandum header.

In preparation of your arrival as Trustee of the Bankruptcy Court, Katie asked me to help clean up the office to make it neat and organized so it would be easier to find anything you need.

I threw out all magazines that were older than 2010.

I threw out all the boxes of fabric samples that were considered years ago for the purposes of re-upholstering furniture, drapes, etc. in the suites, lobby, restaurant, etc. I also threw out the shingle and siding samples that we had received back in 2005 for consideration with regard to the renovation as I am sure there are much more up-to-date materials to be considered now.

Katie asked me to go through her files of the many outside organizations she belongs to, serves as a board member on and/or has chaired (Florida Council of 100, Florida Hotel and Lodging Association, Sarasota Chamber of Commerce, Tourist Development Council, Economic Development Corporation of Sarasota County, Leadership Sarasota, Girls' Inc., etc.) and discard dated and unnecessary paperwork.

I of course saved all the wonderful, personal notes she has received from dignitaries and guests who have stayed at The Colony as well as notes she has received from colleagues who have commended her for the work she has done in the hospitality and tourism industry as well with the many organizations she has served.

She asked me to go through the boxes of videos keeping the ones pertaining to The Colony and discarding the ones people had sent her personally that advertised their resorts, motivational speaking programs, etc.

She asked me to pull the Inc. files and discard unimportant information, which I did, and then have the Inc. files taken up to Dr. Klauber's office for storage.

As far as the Ltd. files, Katie instructed me to keep all important documents (minutes, financials, etc.) and discard unimportant and/or duplicates of the same information. Here what I remember throwing away.

1. The Colony has not had "Owner Weekends" in the 6 years I have worked here. Information with regard to those weekends including as the computer printouts of reservations of who was going to be attending and the Banquet Event Orders detailing the menu and room set up for events was thrown out. Reservation attendance and BEO's would be stored in the computer system. Programs and other "marketing" material for the events are stored in the marketing files.

2. Handwritten personnel schedules from several years ago for staff working in different departments around property were thrown out.

EXHIBIT

tabbles

C

3. Old Sarasota/Manatee County events for which Colony provided group rooms and performed catering i.e. Florida Winefest & Auction were discarded. Reservation information and BEO's are stored on the computers.

4. Information on old employee events such as summer and holiday parties was discarded. Pertinent information such as BEO's is stored on the computer.

5. Drafts of old Colony newsletters – finals are stored in the marketing department.