

IN THE SUPERIOR COURT OF RABUN COUNTY
STATE OF GEORGIA

UNITED COMMUNITY BANK,

Plaintiff,

GC LOT LOAN, LLC, a Georgia limited liability
Company and RL PROP 2011-1 INVESTMENTS
LLC, a Delaware limited liability company,

Intervenors and Plaintiffs,

v.

SELAF WATERFALL DEVELOPMENT CO.,
LLC, SELAF WATERFALL COUNTRY CLUB,
LLC, SELAF WATERFALL WATER AND
SEWER, LLC, and SELAF WATERFALL
HOLDING CO., LLC,

Defendants.

Civil Action

File No. 2012-CV-0315-S

REPLY OF RECEIVER TO RESPONSES OF INTERVENORS

COMES NOW, Hays Financial Consulting, LLC, the Receiver (the "Receiver") for the real and personal property (the "Property") of the above captioned Defendants, and files this Reply (the "Reply") to the Responses (the "Responses") of the above captioned Intervenors (the "Intervenors") and hereby represents as follows:

1. At all times relevant hereto, the Receivership was insolvent as the Receiver required monthly funding from a third party in excess of \$200,000 per month in order to pay the monthly operating expenses associated with the Receivership.
2. After seeking the appointment of the Receiver, United Community Bank ("UCB") funded the operating expenses of the Receivership without any objection to the monthly expenses of the Receivership through October, 2012.

3. The operating expenses of the Receivership between November 1, 2012, and December 4, 2012, in the total amount of \$199,622.00, exclusive of the fees and expenses of the Receiver and its professionals, are as detailed in the Fourth Interim Report and Final Report filed by the Receiver and are the responsibility of the Intervenors as a result of: a) a prior contractual agreement to fund the expenses of the Receivership after October 31, 2012, between the Intervenors and UCB with the Receivership as the third-party beneficiary; b) an enforceable commitment of the Intervenors with the Receiver to pay the November expenses, which was relied upon by the Receiver to continue operations during November through December; and c) liability for November expenses was acknowledged by the Intervenors at the hearing before this Court on December 3, 2012.
4. Although the Intervenors have failed to challenge any of the operating expenses between November 1, 2012, and December 4, 2012, the Intervenors have only caused the payment into the Registry of the Court of the total amount of approximately \$125,258.32, which amount is comprised of: a) a payment of \$104,000 from an entity related to the Intervenors; and b) approximately \$21,258.32 in account receivable payments received by the Intervenors.
5. The funds submitted by or on behalf of the Intervenors are insufficient to pay the outstanding operating expenses of the Receivership, exclusive of professional fees. After the application of a credit in the amount of \$57,346 for revenues during the period, the Receivership has an operating shortfall, exclusive of professional fees, in the amount of \$17,018 that is the responsibility of the Intervenors and for which the Intervenors are contractually obligated to pay.

6. After accounting for outstanding professional fees and expenses incurred by the Receiver and its professionals as set forth in the First and Final Fee Application of the Receiver (the "Fee Application") and credits for funds paid into the Registry of the Court in December, 2012, to pay all expenses of the Receivership in full, an additional amount of \$52,356 should be paid into the Registry of the Court for the benefit of the creditors of the Receivership. A schedule detailing the funding request to pay the outstanding expenses of the Receivership is attached hereto as Exhibit "A" and incorporated herein by reference.
7. The Intervenors falsely assert that the Receiver incurred substantial fees to hinder or delay the transfer of the Property or the foreclosure sale of the Property by initially seeking authority to file an insolvency proceeding for the Property in conjunction with a motion seeking an order directing the Intervenors to pay certain obligations of the Receivership, but the Receiver and its professionals did incur a substantial amount of fees primarily in an attempt to obtain payment of the unfunded operating expenses of the Receivership that are the responsibility of the Intervenors.
8. All costs in the Fee Application of the Receiver coded to the project category "Funding Request" in the total amount of \$33,421 are directly traceable to the failure of the Intervenors to fund the operations of the Receivership as promised. In addition, the substantial legal fees in November and December of over \$37,376 are directly traceable to the failure of the Intervenors to fund the operations of the Receivership as promised. The Receiver and its professionals have incurred additional legal and professional costs required as a direct result of the failure of the Intervenors to fund the operating costs as promised, agreed, and contracted. The efforts to terminate the Receivership and recover sufficient funds

to ensure the solvency of the Receivership have resulted in substantial, additional fees for which the Receiver and its professionals have not sought further compensation.

9. Despite the representations of the Intervenors, all fees and expenses set forth in the Fee Application were necessary and customary for the services provided, necessary to the operation of the Receivership, and should be allowed and paid as proper administrative expenses of the Receivership.
10. The Intervenors: a) are the successors in interest of the party who procured the appointment of the Receiver as a result of obtaining the interest of UCB in the Property; b) have received the benefits of the Receivership in the value of the Property maintained by the Receivership; and c) should not now be allowed to successfully contest the selection of the Receiver, the qualifications of the Receiver, or shift the costs of the Receivership to other parties who dealt in good faith with the Receivership, allowing the Intervenors not only to acquire the Property from UCB at a substantial discount, but to also obtain the benefits of the Receivership at a discount to the detriment of creditors and the professionals whose efforts resulted in the continued operation and preservation of value of the Property now owned by the Intervenors.
11. The Receiver reserves the right to amend or supplement this Response by subsequent pleading or at any future hearing in this proceeding.

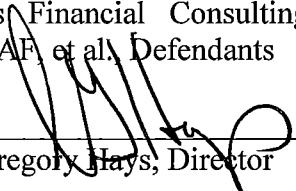
WHEREFORE, the Receiver respectfully requests that the Court:

1. Deny the relief sought in the Responses of the Intervenors;
2. Grant the relief sought and approve the Motion to Terminate, Final Report, and Fee Application filed by the Receiver in all respects;
3. Order the Intervenors to either pay into the Registry of the Court or pay the creditors directly the amount of \$52,356;

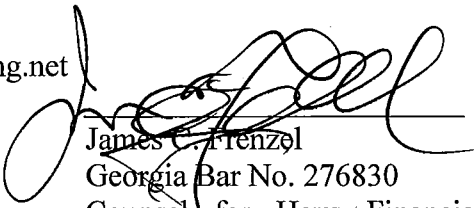
4. Approve the final professional fees and expenses in the Receivership; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 8th day of January, 2013.

Hays Financial Consulting, LLC, Receiver for
SELAF, et al., Defendants

By 
S. Gregory Hays, Director

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SELAF Waterfall Country Club, LLC
Funding Request
As of Jan 7, 2013

Operating Expenses

Nov & Dec Operating Expenses	(1) \$	199,622
Less: Cash Receipts 11/01-12/20/12		57,346
Less: Rabun County Company, LLC Paid to Registry		104,000
Less: Member Receipts Paid to Registry		21,258
Nov & Dec Operating Expenses Not Funded		<u>17,018</u>

Professional Fees

Receiver's Direct Cost for Funding Request		33,421
Receiver's Fees for Nov & Dec		17,276
Receiver's Legal Fees for Nov & Dec		37,376
Accounting Fees for Nov & Dec		30,807
Total Professional Fees		<u>118,880</u>

Available Funds

Receiver Paid to Registry		77,230
Receiver's Bank Accounts		1,882
Pending Insurance Refunds		4,430
Total Available Funds		<u>83,542</u>

Required Funding

\$ 52,356

Notes:

1. Excludes December 1st lease invoices of \$23,800.

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GC LOT LOAN, LLC, a Georgia limited liability	:	
Company and RL PROP 2011-1 INVESTMENTS	:	
LLC, a Delaware limited liability company,	:	
	:	
Intervenors and Plaintiffs,	:	
	:	File No. 2012-CV-0315-S
v.	:	
	:	
SELAF WATERFALL DEVELOPMENT CO.,	:	
LLC, SELAF WATERFALL COUNTRY CLUB,	:	
LLC, SELAF WATERFALL WATER AND	:	
SEWER, LLC, and SELAF WATERFALL	:	Judge Russell W. Smith
HOLDING CO., LLC ,	:	
	:	
Defendants	:	
	:	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the following
REPLY OF RECEIVER TO RESPONSES OF INTERVENORS in a sealed envelope by first
class mail with postage adequate to insure delivery to:

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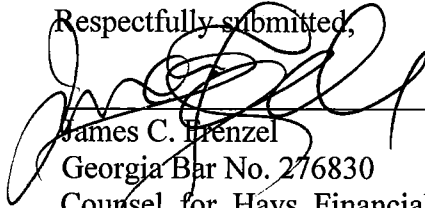
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This, the 8th day of January, 2013.

Respectfully submitted,



James C. Frenzel

Georgia Bar No. 276830
Counsel for Hays Financial Consulting, LLC,
Receiver for SELAF, et al., Defendants

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