

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

**ORDER APPROVING FINAL REPORT, DISCHARGING THE RECEIVER OF ANY
FURTHER LIABILITY OR OBLIGATION, AND TERMINATING THE
RECEIVERSHIP**

This matter is before the Court upon the: A) Motion (the “Motion to Terminate”)¹ of Hays Financial Consulting, LLC, the Receiver (the “Receiver”) for the real and personal property (the “Property”) of the above captioned Defendants (the “Defendants”), for: 1) approval of final report (the “Final Report”) regarding the administration of the Property of the Receivership Estate (the “Receivership”) and any unpaid debts (the “Obligations”) related to the Receivership or the Property; and 2) an Order: a) directing the payment of the outstanding Obligations; b) discharging the Receiver of any further liability or obligation; c) approving the final fees and expenses of the Receiver and its professionals and directing payments; and d)

¹ Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion to Terminate.

terminating the Receivership, and Memorandum of Law in support thereof; B) Motion (the "Motion for Authority") filed by the Receiver for: 1) authority to: a) relinquish possession of the Property to the successful bidder at the foreclosure sale of the real Property of the Defendants (the "Foreclosure Sale"); b) close the Receivership and terminate its duties as Receiver; c) file a final report regarding the administration of the Receivership and any unpaid debts; and d) withdraw as Receiver; 2) instructions for the payment or non-payment of certain outstanding debts; 3) a discharge of any further liability or obligation; and/or 4) authority to file a petition seeking bankruptcy protection for the Defendants; C) Motion to Intervene and Dissolve Receivership (the "Motion for Dissolution") filed by the above styled Intervenor (the "Intervenor") seeking to intervene in this Proceeding (previously granted in part) and to dissolve the Receivership created by this Court pursuant to an Order of this Court dated August 2, 2012 (the "Appointment Order"); and D) the Response (the "Response") by the Receiver to the Motion for Dissolution. On December 3, 2012 (the "December Hearing"), the Court held a hearing to consider the Motion for Authority, Motion for Dissolution, and Response incident to which the Court granted certain relief requested in the Motion for Authority and Motion for Dissolution and continued the remaining relief requested therein until the hearing on the Motion to Terminate.

Upon appropriate notice to creditors and parties-in-interest entitled to notice, the Court held a hearing on the Motion to Terminate, Motion for Authority, Motion for Dissolution, the Response, the Final Fee Application, and any objections thereto (collectively, the "Pleadings") on February 4, 2013, at approximately 2:00 p.m. (the "February Hearing"). After thorough consideration of the Pleadings, the record in this Proceeding, other pleadings and reports filed by

the Receiver, the evidence presented at the February Hearing, and arguments of counsel for parties-in-interest, this Court having been fully advised hereby FINDS and CONCLUDES that:

1. The relief set forth herein is in the best interests of the Receivership and all parties in interest and sufficient grounds and good cause exist for the entry of this Order without the necessity of further notice or a hearing thereon.

2. Appropriate and adequate notice of the Pleadings and the relief sought therein has been provided to all interested parties entitled to notice and such notice was reasonable and appropriate.

3. Plaintiff United Community Bank ("UCB"): a) received notice of the December Hearing and the February Hearing; b) did not file a response to any of the Pleadings, which were all properly served upon UCB; c) failed to appear at either the December Hearing or the February Hearing; and d) did not object to any status reports or notices of statement of account filed by the Receiver.

4. Pursuant to certain loan documents (the "Loan Documents") executed by and between UCB and the Defendants prior to August 2, 2012, UCB obtained a secured interest in certain real property of the Defendants that was being used as a country club and golf course facility (the "Club").

5. In order to protect the secured interest of UCB in the Club, UCB obtained the appointment of the Receiver to administer the Property pursuant to the terms of the Appointment Order.

6. The Receiver has managed, preserved, protected, maintained, and administered the assets of the Receivership in a reasonable, prudent, diligent and efficient manner and in accordance with the Appointment Order.

7. Since the Club required monthly funding from a third party in excess of \$200,000 per month to pay the monthly operating expenses of the Club, UCB funded without objection the operating expenses incurred by the Receiver through October, 2012.

8. On November 29, 2012, the Receiver filed the Motion for Authority due to uncertainty regarding the payment of expenses of the Receivership for the period from November 1, 2012, through December 4, 2012.

9. At the December Hearing, this Court entered an oral ruling that was formally set forth in a written order entered on December 5, 2012, *nunc pro tunc* to December 3, 2012 (the "December Order"), in which the Court, among other relief, ordered: a) the Receiver to issue certain payments from funds available in the Receivership; b) the Intervenor and the Receiver to transfer certain funds into the Registry of the Court; c) the Receiver to file a Final Report, the Final Fee Application, and the Motion to Terminate by December 31, 2012; d) that the Receiver was authorized to transfer the Property of the Defendants to the successful bidder at the Foreclosure Sale; e) the recipient of the Property shall be prohibited from transferring any Personal Property, except in the ordinary course of business, until the termination of the Receivership or further order by the Court; and f) that further hearing on the Motion for Authority and Motion for Dissolution shall be continued until a hearing on the Motion to Terminate the Receivership.

10. The Intervenor subsequently purchased the real Property at the Foreclosure Sale initiated by UCB.

11. Pursuant to the December Order: a) the Receiver: i) disbursed certain payments from funds then available in Receivership; ii) subsequently paid the remaining funds available in the Receivership in the possession of the Receiver in the amount of \$77,230 into the Registry of

the Court; iii) turned over possession and control of the Property in the Receivership to the Intervenor; and iv) filed by December 31, 2012, the Motion to Terminate, Final Report, and the Final Fee Application, which includes services rendered in November through December for which the Receiver and professionals of the Receiver have not been paid; and b) the Intervenor: i) paid \$104,000 into the Registry of the Court; ii) submitted to the Registry of the Court payments from accounts receivable in the form of Negotiable Instruments (the "Negotiable Instruments") received after December 4, 2012, in the amount of approximately \$21,258.32; and iii) assumed control and responsibility for the operation of the Property.

12. The Receiver has properly transferred all Property with the authority of this Court to the Intervenor and is no longer in possession of any Property or funds of the Receivership with the exception of certain insurance premium payment refunds received after the Final Report was filed by the Receiver as of December 21, 2013.

13. The funds and Negotiable Instruments currently held in the Registry of the Court related to the Receivership are insufficient to pay all of the outstanding Obligations of the Receivership.

14. The duties, responsibilities and obligations of the Receiver have been fully performed and the grounds for the Receivership no longer exist.

15. The Court will enter separate Orders regarding the Final Fee Application and the payment of the outstanding Obligations of the Receivership.

Accordingly, for good cause shown, it is hereby:

ORDERED, that the Motion to Terminate and Motion for Authority are GRANTED with the relief requested therein regarding the Final Fee Application and payment of the outstanding

Obligations to be addressed by separate Orders of this Court and the Motion for Dissolution is denied except as set forth herein; and it is further

ORDERED, that the Final Report of the Receiver is APPROVED; and it is further

ORDERED, that: 1) neither the Receiver nor the Receivership shall have any liability for the payment of the Obligations or any unpaid expenses of the Receivership, the Club, or the Property; and 2) any outstanding expenses related to the Receivership or the Property shall be further addressed in a separate order of this Court; and it is further

ORDERED, that the Receiver is authorized to wind up the Receivership and terminate its duties as the Receiver and withdraw as Receiver for the Property; and it is further

ORDERED, that the Receiver, Hays Financial Consulting, LLC, and all persons and entities engaged and employed by the Receiver, including its professionals, shall be: a) fully discharged of all duties, responsibilities, obligations, and liabilities in connection with the administration of the Receivership and the Property and from any other obligation imposed by the Appointment Order; b) released, discharged, and absolved of and from any and all claims and causes of action that were, could have been, or might be brought against them arising from or related to the Receivership or the administration of the Receivership, including but not limited to, with regard to the Property or any claim concerning or relating to the filing of any local, state, or federal tax returns and/or the reporting of any income, assets, or tax consequences to any person or entity; and c) forever discharged of any liability arising from or out of the Receivership or the Property to any holder of any claims against or interests in the Receivership, Defendant, the Property, or to any other party; and it is further

ORDERED, that the Receivership imposed pursuant to the Appointment Order and the Receivership Estate shall be deemed terminated and closed upon the completion of the

distribution to creditors of the Receivership as ordered by this Court pursuant to an Order of current date herewith and the filing by the Receiver of the Final Report of Distribution with this Court; and it is further


ORDERED, that to the extent any dispute arises concerning the administration of the assets entrusted to the Receiver or to the extent that any person or entity seeks to pursue or assert any claim or action against the Receiver arising out of or related to its duties as Receiver in this case, this Court retains jurisdiction to hear and resolve any such disputes or claims.

This the 3rd day of February, 2013.



Judge Russell W. Smith
Judge of Superior Court
Rabun County, Georgia

Order prepared and presented by:

By: 
James C. Frenzel
Georgia Bar No. 276830
Counsel for Hays Financial Consulting, LLC,
Receiver for SELAF, et al., Defendants

Of Counsel:
James C. Frenzel, P.C.
Suite 155, East Tower
Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 266-9961
jcf-bklaw@mindspring.com