

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Foxwood Hills Property Owners Association,
Inc.,

Debtor.

Foxwood Hills Property Owners Association,
Inc.,

Plaintiff.

v.

783-C LLC; *et al.*,¹

Defendants.

Case No. 20-02092-hb

Chapter 11

Adv. Pro. No. 20-80049-HB

**NOTICE AND APPLICATION FOR
SETTLEMENT AND COMPROMISE**

TO: ALL PARTIES APPEARING IN THIS ADVERSARY PROCEEDING, AND ALL CREDITORS AND PARTIES IN INTEREST APPEARING IN THIS BANKRUPTCY CASE:

YOU ARE HEREBY NOTIFIED THAT Plaintiff Foxwood Hills Property Owners Association, Inc. ("**Plaintiff**") and Defendant Oconee County Forfeited Land Commission ("**Defendant OCFLC**"), by and through their undersigned attorneys, are applying for approval of the following compromise or settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and SC LBR 9019-1.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to approve the settlement or compromise between Plaintiff and Defendant OCFLC, or you want the Court to consider your views on the Application, then within twenty-one (21) days of service of this notice, you or your attorney must:

¹ Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7010 of the Federal Rules of Bankruptcy Procedure, Plaintiff Foxwood Hills Property Owners Association, Inc. is naming the first defendant in this caption, rather than listing all defendants, who number over 3,300 names and otherwise comprise a caption of over twenty-six pages.

File with the Court a written response, return or objection at:

1100 Laurel Street
Columbia, SC 29201

If you mail your response, return, or objection to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above. You must also serve a copy simultaneously on all parties in interest.

Responses returns or objections filed by an attorney must be electronically filed in ecf.scb.uscourts.gov.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Application and may enter an Order granting that relief.

No hearing will be held on this application, except at the direction of the judge, unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **May 18, 2021 at 10:30 a.m., at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina**. No further notice of this hearing will be given.

NATURE OF DISPUTE: In its Amended Complaint [Doc. 2] filed in this adversary proceeding on July 23, 2020, Plaintiff seeks a declaratory judgment and equitable relief based on equitable principles and maxims, common law principles and statutory authority. Specifically, Plaintiff seeks an Order from the Court declaring that (a) all of the Defendants are members of Plaintiff with equal voting rights, and (b) all of the Defendants must pay annual budget-based dues, fees and assessments to Plaintiff in order to enable it to remain solvent and meet its annual approved budget. Because Defendant OCFLC owns hundreds of lots in the Community, it was named as a Defendant in the Amended Complaint. After Plaintiff duly and properly served Defendant OCFLC with the Summons and Amended Complaint, Defendant OCFLC filed its Answer on September 24, 2020 [Doc. 36]. On September 30, 2020, Defendant OCFLC filed its Amended Answer (the "Amended Answer") [Doc. 39].

Defendant OCFLC holds title ownership to these hundreds of lots for the benefit of the public, to ensure the payment of past due property taxes, pursuant to S.C. Code § 12-59-10, *et seq.* Defendant OCFLC received title to such property upon a tax sale of the property. Oconee County has the right to assess ad valorem taxes on the property, and to assert a tax lien which is first in priority and senior to any lien of a creditor, including a lien by Plaintiff for unpaid assessments on the property. Plaintiff is informed and believes that Defendant OCFLC is not obligated, and could not be compelled, to pay the assessments to Plaintiff.

AMOUNT DISPUTED: No monetary judgment has been sought by Plaintiff against Defendant OCFLC or any other Defendant. Plaintiff seeks declaratory relief.

PROPOSED SETTLEMENT OR COMPROMISE: The proposed settlement is as follows:

To fully resolve Plaintiff's claims against Defendant OCFLC in this adversary proceeding, Plaintiff and Defendant OCFLC hereby covenant and agree as follows: (a)

Defendant OCFLC shall not be deemed a member of the Association as a result of its title ownership of lots in the Foxwood Hills community; (b) Defendant OCFLC shall not have any rights, access or use of Plaintiff's amenities; (c) Defendant OCFLC shall not be subject to Plaintiff's Bylaws and shall have no voting rights in Plaintiff; and (d) Defendant OCFLC shall not be required to pay budget-based fees, dues and assessments to Plaintiff for the lots it owns, nor shall Defendant OCFLC be required to any fees, dues and assessments to Plaintiff whatsoever.

Plaintiff and Defendant OCFLC hereby covenant and agree that the terms stated herein shall only be applicable to lots in the community while they are owned by Defendant OCFLC. Once the lots owned by Defendant OCFLC are transferred to a non-governmental third-party, that transferee will be a member of Plaintiff, subject to Plaintiff's Bylaws, and required to pay annual budget-based dues, fees and assessments to Plaintiff.

A copy of that certain [proposed] Consent Order Resolving Plaintiff's Claims Against Defendant Oconee County Forfeited Land Commission is attached hereto.

BENEFIT TO THE ESTATE: The proposed settlement serves to prevent any further litigation costs with Defendant OCFLC and serves to establish by Court order the rights and obligations between the parties.

MOVING PARTIES: Plaintiff and Defendant OCFLC jointly move for approval and authorization of this proposed settlement.

Plaintiff and Defendant OCFLC hereby certify that the terms set out above are complete and have been agreed upon by them.

WHEREFORE, Plaintiff and Defendant OCFLC request that the Court issue an order authorizing the settlement and compromise and granting such other and further relief as may be proper.

/s/ Kyle A. Brannon
Julio E. Mendoza, Jr., Court ID No. 3365
Kyle A. Brannon, Court ID No. 11509
Carl H. Petkoff, Court ID No. 13447
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Box 2426
Columbia, South Carolina 29202
Telephone: 803-540-2026
Email: rmendoza@nexsenpruet.com
kbrannon@nexsenpruet.com
cpetkoff@nexsenpruet.com

April 15, 2021
Columbia, South Carolina

Attorneys for Plaintiff Foxwood Hills Property Owners Association, Inc.

/s/ James W. Logan, Jr.
James W. Logan, Jr., Court ID No. 2712
LOGAN & JOLLY, LLP
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Telephone: 864-226-1910
Facsimile: 864-226-1931
Email: logan@loganandjolly.com

April 15, 2021
Anderson, South Carolina

Attorneys for Defendant Oconee County
Forfeited Land Commission

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

Foxwood Hills Property Owners Association,
Inc.,

Debtor.

Foxwood Hills Property Owners Association,
Inc.,

Plaintiff.

v.

783-C LLC; *et al.*,²

Defendants.

Case No. 20-02092-hb

Chapter 11

Adv. Pro. No. 20-80049-HB

CERTIFICATE OF SERVICE

I, Kyle A. Brannon, of Nexsen Pruet, LLC, do hereby certify that copies of the **NOTICE AND APPLICATION FOR SETTLEMENT AND COMPROMISE** and proposed **CONSENT ORDER RESOLVING PLAINTIFF'S CLAIMS AGAINST DEFENDANT OCONEE COUNTY FORFEITED LAND COMMISSION** were served on the parties in interest listed on the attached Exhibit A, by depositing a copy of the same in the U.S. Mail, first class postage prepaid, on April 15, 2021, in Columbia, South Carolina.

² Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7010 of the Federal Rules of Bankruptcy Procedure, Plaintiff Foxwood Hills Property Owners Association, Inc. is naming the first defendant in this caption, rather than listing all defendants, who number over 3,300 names and otherwise comprise a caption of over twenty-six pages.

/s/ Kyle A. Brannon

Julio E. Mendoza, Jr., Court ID No. 3365

Kyle A. Brannon, Court ID No. 11509

Carl H. Petkoff, Court ID No. 13447

NEXSEN PRUET, LLC

1230 Main Street, Suite 700 (29201)

Post Office Box 2426

Columbia, South Carolina 29202

Telephone: 803-540-2026

Email: rmendoza@nexsenpruet.com

kbrannon@nexsenpruet.com

cpetkoff@nexsenpruet.com

April 15, 2021

Columbia, South Carolina

Attorneys for Plaintiff Foxwood Hills Property
Owners Association, Inc.

EXHIBIT A

Linda K. Barr, Esquire
Office of the United States Trustee
1835 Assembly Street, Suite 953
Columbia, SC 29201
(by ECF/NEF System notification only)

Michael B. Dodd, Esquire
The Dodd Law Firm, LLC
13 Sevier Street
Greenville, SC 29605

James W. Logan, Jr., Esquire
Logan & Jolly, LLP
PO Box 259
Anderson, SC 29622

Teri L. Callen, Esquire
3447 Blossom Street
Columbia, SC 29205

Wilma E. Black
6501 Queens Way Dr.
Columbia, SC 29209

Bryan R. Weisbecker
General Contractor, LLC
5255 Alta Vista Ave.
St. Augustine, FL 32080

Charles V. Burrell
6612 W Anthony Rd.
Ocala, FL 34479

Jackie C. Busbee, Jr.
608 Loop Circle
Westminster, SC 29693

Tona Renee Busbee
608 Loop Circle
Westminster, SC 29693

Lemuel J. Evans
806 Moore Drive
Westminster, SC 29693

Terri Gayheart
806 Moore Drive
Westminster, SC 29693

Jessica Havens
203 Rowe Road
Greenville, SC 29611

Candice C. Jordan
1707 Old Hoods Mill Rd.
Commerce, GA 30529

Robin L. Jordan
1707 Old Hoods Mill Rd.
Commerce, GA 30529

William Murdock
425 Kingston Loop Dr.
West Minister, SC 29693

Alvin Murphy
117 Chelsea Street
Moore, SC 29369

Judy Murphy
117 Chelsea Street
Moore, SC 29369

Sheri Kimball, Trustee for Trust B
Under the Will of James Perry Kimball
158 Seclusion Court
Lexington, SC 29072

Christopher A. Pierce
605 White Owl Lane
Seneca, SC 29678

Jim E. Pitt
43784 Fredericksburg St.
Canton, MI 48188

Tammy J. Pitt
43784 Fredericksburg St.
Canton, MI 48188

Jody Pope
4198 Liberty Pointe Lane
Auburn, GA 30011

Whitney Pope
4198 Liberty Pointe Lane
Auburn, GA 30011

Jih M. Wang
647 Polo Rd, Apt 101
Columbia, SC 29223

Robert Nicole Brynn, LLC
7102 28th St. E
Sarasota, FL 34243

Jamahl Shareef
3301 Covenant Road
Columbia, SC 29204

Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201

Jane H. Downey, Esquire
Moore Taylor Law Firm, P.A.
PO Box 5709
West Columbia, SC 29171

John Fisher Beach, Esquire
Adams and Reese, LLP
1501 Main Street, Fifth Floor
Columbia, SC 29201

Gail Benson
414 Kinston Loop Dr
Westminster, SC 29693

Robert D. Watkins
7 Zoe Court
Bluffton, SC 29910

Donna Watkins
7 Zoe Court
Bluffton, SC 29910

Hugh C. McMillan, III
318 Oleander Lane
Spartanburg, SC 29303

South Carolina Dept of Revenue
PO Box 122265
Columbia SC 29211-9979

John Deere Financial
Attn: Amber Mitchell
6400 NW 86th Street
Johnston, IA 50131-6600

Internal Revenue Service
Centralized Insolvency Operation
PO Box 7346
Philadelphia PA 19101-7346

Oconee County Treasurer
415 S. Pine Street
Walhalla SC 29691

TIAA Commercial Finance, Inc.
10 Waterview Boulevard
Parsippany, NJ 0705

Hugh H. Macaulay, IV
PO Box 239
206 Kingswood Drive
Westminster, SC 29693

Kimberly Macaulay
PO Box 239
206 Kingswood Drive
Westminster, SC 29693

Larry A. Hembree
411 Kalmia Drive
Columbia, SC 29205

Bill H. Lewis
156 Little Choestoea Rd
Westminster, SC 29693

Dottie Lewis
156 Little Choestoea Rd
Westminster, SC 29693

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Foxwood Hills Property Owners Association,
Inc.,

Debtor.

Foxwood Hills Property Owners Association,
Inc.,

Plaintiff.

v.

783-C LLC; *et al.*,¹

Defendants.

Case No. 20-02092-hb

Chapter 11

Adv. Pro. No. 20-80049-hb

**CONSENT ORDER RESOLVING
PLAINTIFF’S CLAIMS AGAINST
DEFENDANT OCONEE COUNTY
FORFEITED LAND COMMISSION**

This matter comes before me upon the consent and motion of Plaintiff Foxwood Hills Property Owners Association, Inc. (the “**Association**”) and Defendant Oconee County Forfeited Land Commission (“**OCFLC**”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and SC LBR 9019-1, for the Court to enter this Consent Order stating the terms upon which the Association’s claims against OCFLC shall be fully resolved in this adversary proceeding.

The Association and OCFLC agree and stipulate that:

¹ Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7010 of the Federal Rules of Bankruptcy Procedure, Plaintiff Foxwood Hills Property Owners Association, Inc. is naming the first defendant in this caption, rather than listing all defendants, who number over 3,300 names and otherwise comprise a caption of over twenty-six pages.

1. On July 13, 2020, the Association commenced this adversary proceeding by filing its Complaint [Doc. 1]. On July 23, 2020, prior to service of the Complaint on any party, the Association filed its Amended Complaint [Doc. 2] (the “**Amended Complaint**”) to add as defendants fifty-five (55) individuals who had recently become lot owners in the Foxwood Hills community (the “**Community**”).

2. Because OCFLC owns a substantial number of lots in the Community, it was named as a defendant in the Amended Complaint. After the Association duly and properly served OCFLC with the Summons and Amended Complaint, OCFLC filed its Answer on September 24, 2020 [Doc. 36]. On September 30, 2020, OCFLC filed its Amended Answer (the “**Amended Answer**”) [Doc. 39].

3. Attached as Exhibit “A” to its Amended Answer, OCFLC lists the hundreds of lots that it owned in the Community at that time. The number of lots OCFLC owns in the Community fluctuates at any given point in time. OCFLC holds title ownership to these lots for the benefit of the public, to ensure the payment of past due property taxes, pursuant to S.C. Code § 12-59-10, *et seq.*

4. In its Amended Complaint, the Association seeks an Order from the Court declaring that (a) all of the Defendants are members of the Association with equal voting rights, and (b) all of the Defendants must pay annual budget-based dues, fees and assessments to the Association in order to enable it to remain solvent and meet its annual approved budget.

5. To fully resolve the Association’s claims against OCFLC in this adversary proceeding, the Association and OCFLC hereby covenant and agree as follows: (a) OCFLC shall not be deemed a member of the Association as a result of its title ownership of lots in the Community; (b) OCFLC shall not have any rights, access or use of the Association’s amenities; (c) OCFLC shall not be subject to the Association’s Bylaws and shall have no voting rights in the

Association; and (d) OCFLC shall not be required to pay budget-based fees, dues and assessments to the Association for the lots it owns, nor shall OCFLC be required to any fees, dues and assessments to the Association whatsoever.

6. The Association and OCFLC hereby covenant and agree that the terms stated herein shall only be applicable to lots in the Community while they are owned by OCFLC. Once the lots owned by OCFLC are transferred to a non-governmental third-party, that transferee will be a member of the Association, subject to the Association's Bylaws, and required to pay annual budget-based dues, fees and assessments to the Association.² *See Judgment*, pp. 1-2 [Doc. 140] (relating to successors in interest to current lot owners).

7. The Association shall state the terms herein in its amended Chapter 11 Plan of Reorganization, wherein the Association will state its treatment of OCFLC as a separate, impaired class.

It appearing that the Association and OCFLC consent to the terms stated herein to resolve all claims by the Association against OCFLC in this adversary proceeding;

It further appearing that all parties appearing in this adversary proceeding, all creditors and appearing parties in interest were served with the Notice and Application for Settlement and Compromise, and no objections were made or filed in the prescribed time. It further appears that that the resolution proposed by the Association and OCFLC is proper and should be granted.

Therefore, it is ORDERED that the Association's claims against OCFLC are resolved pursuant to the terms stated herein.

² With the exception of OCFLC, neither the Association's claims against all other defendants who have filed an answer or responsive pleading in this adversary proceeding (the "Answering Defendants"), nor the Answering Defendants' claims and defenses against the Association, shall be affected by this Consent Order. The Association understands that since the filing of the Amended Complaint, OCFLC has transferred certain lots in the Community to Answering Defendants; however, this Consent Order does not serve to automatically render those Answering Defendants who purchased lots from OCFLC as members of the Association or require them to pay budget-based fees, dues and assessments to the Association. Those issues remain pending and subject to adjudication by the Court in this matter.

AND IT IS SO ORDERED.

WE SO MOVE AND CONSENT:

/s/ Kyle A. Brannon

Julio E. Mendoza, Jr., Court ID No. 3365

Kyle A. Brannon, Court ID No. 11509

Carl H. Petkoff, Court ID No. 13447

NEXSEN PRUET, LLC

1230 Main Street, Suite 700 (29201)

Post Office Box 2426

Columbia, South Carolina 29202

Telephone: 803-540-2026

Email: rmendoza@nexsenpruet.com

kbrannon@nexsenpruet.com

cpetkoff@nexsenpruet.com

Attorneys for Plaintiff Foxwood Hills
Property Owners Association, Inc.

April 15, 2021
Columbia, South Carolina

/s/ James W. Logan, Jr.

James W. Logan, Jr., Court ID No. 2712

LOGAN & JOLLY, LLP

1805 North Boulevard (29621)

P.O. Box 259 (29622)

Telephone: 864-226-1910

Facsimile: 864-226-1931

Email: logan@loganandjolly.com

Attorneys for Defendant Oconee
County Forfeited Land Commission

April 15, 2021
Anderson, South Carolina