

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re: Case No. 21-15555 -EPK

PALM BEACH RESORT AND BEACH CLUB Chapter 11
CONDOMINIUM ASSOCIATION, INC.,

Debtor.

DISBURSING AGENT’S MOTION TO (A) ESTABLISH DEADLINE FOR FILING CLAIMS BY, AND OBJECTION AND DISBURSEMENT PROCEDURE FOR UNKNOWN HEIRS OF OWNER(S) OF UNIT-WEEK INTEREST(S); AND (B) MODIFY NAMING CONVENTION USED FOR ALL UNKNOWN HEIRS OF OWNER(S) OF UNIT-WEEK INTEREST(S)

Maria Yip, Disbursing Agent (“Disbursing Agent”) for the bankruptcy estate (the “Bankruptcy Estate”) of Palm Beach Resort and Beach Club Condominium Association, Inc. (the “Debtor”), by and through its undersigned counsel¹, moves, pursuant to 11 U.S.C. § 105(a), the *Order Appointing Linda Leali, ESQ. as Attorney Ad-Litem to Represent Any Unknown Unit-Week Interest Owners and Any Defendants in both the Main Proceeding and the Adversary Proceeding [...]* (the “Appointment Order”) [ECF # 93] and the terms of the to the confirmed [ECF # 97] *Plan of Liquidation* [ECF # 53], to (a) establish deadline for filing claims by, and objection and disbursement procedure for Unknown Heirs of Owner(s) of Unit-Week Interest; and (b) modify naming convention used for all Unknown Heirs of Owner(s) of Unit-Week Interest (“Motion”). In support of the Motion, the Disbursing Agent states as follows:

¹ On March 2, 2022, the Disbursing Agent, pursuant to the terms of the Plan of Liquidation [ECF # 53] as confirmed [ECF # 97], retained the undersigned counsel, Ido Alexander and AlignX Law, as well as Alessandra Stivelman and Eisinger Law, as former counsel for the Debtor.

BACKGROUND

The Debtor and the Condominium Units

1. The Debtor was a condominium association, a Florida not-for-profit corporation, with its principal place of business located in Palm Beach County, Florida. It was organized under the laws of the state of Florida and pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes, and the Florida Timeshare Act, Chapter 721, Florida Statutes, and was formed for the purpose of managing, operating and maintaining the real property known as the Palm Beach Resort and Beach Club Condominium (the "Condominium"), according to Declaration of Condominium of The Palm Beach Resort and Beach Club Condominium, as recorded in Official Records Book 3464, Page 1474 of the Public Records of Palm Beach County, Florida (the "Declaration"), and all amendments thereto.

2. The Condominium was located at 3031 S. Ocean Blvd., Palm Beach, Florida and consisted of one (1) two-story building containing twenty-nine (29) units (collectively, the "Units") and common areas, a swimming pool and patio area, paved driveways, walkways and parking areas, dock facility which are common elements appurtenant thereto. From 1981 through 2020 (the "Timeshare Period"), the Condominium operated as a vacation timeshare condominium whereby individuals purchased an ownership interest with the right to use certain week intervals in the Condominium ("Owner(s) of Unit-Week Interest"), and in exchange for ownership interest and for the right to use the Condominium, each owner was subject to regular assessments to maintain and operate the Condominium (collectively referred to herein as "Interval Ownership"). During the Timeshare Period, each Unit was committed to Interval

Ownership. Pursuant to Section 4 of the Declaration, each Unit contained fifty-two (52) Unit Weeks (“Unit Week”), resulting in a total of one thousand five hundred and eight (1,508) Unit Weeks in the Condominium. On January 1, 2021, the Interval Ownership interests held by the Owners of Unit Weeks for each Unit, including the Association owned unit week interests, became tenants in common in accordance with the Declaration.

The Bankruptcy Case, Confirmed Plan and the Sale of the Units

3. On June 4, 2021 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Subchapter V, Chapter 11 of the United States Code (the “Bankruptcy Code”).

4. On November 10, 2021, the Debtor confirmed its Plan of Liquidation. The *Order Confirming the Chapter 11 Plan of Liquidation* was entered on November 16, 2021.

5. Pursuant to the terms of the confirmed plan, Maria Yip was designated the role of Disbursing Agent, and assumed full responsibility for carrying out the terms of the Plan upon the closing date of the sale of the Units owned by the Debtor and the Unit-Week Interest Owners, which was contemplated in the Plan, and as approved by the Court on February 11, 2022 (the “Sale Order”) [ECF # 111].

6. The sale transaction successfully closed on March 2, 2022, and all proceeds from the sale as well as all remaining funds held in the Debtor’s accounts were transferred to the Disbursing Agent contemporaneously therewith.

7. The Disbursing Agent has begun the disbursement process pursuant to the procedures provided for by the Plan and the Sale Order [ECF #111].

***Appointment of Linda Leali, as Attorney Ad-Litem for
The Unknown Heirs of Owner(s) Of Unit-Week Interest(s)***

8. On June 7, 2021, shortly after initiating the bankruptcy proceeding, the Debtor commenced an adversary proceeding, styled *Palm Beach Resort and Beach Club Condominium Association, Inc. v. HPP Holdings, LLC, et. al.*, case number 21-01168-EPK (the “Adversary Proceeding”), against Owner(s) Of Unit-Week Interest(s) as well as other parties, seeking to among other things authorize the sale of the Debtor’s and Co-Owner(s) Of Unit-Week Interest(s) in the real property, pursuant to 11 U.S.C. §363(h).

9. On June 25, 2021, the Court authorized a procedure whereby any party who may claim title interest in the Units that is otherwise different than that which Debtor had on its books and records was able to file a claim on or before November 30, 2021² [ECF ## 37 and 66].

10. Prior to and during the bankruptcy case the Debtor determined that despite best efforts, certain Owners of Unit-Week interests who were defendants in the adversary action are deceased, and either their heirs are unknown at this time, and/or their estates have not been probated such as to permit the Debtor to name and serve the rightful heir to their Unit-Week Interests in the real property. Moreover, Unknown Heirs of Owners of Unit-Week Interest(s) could not be identified, any potential heir filing of claim (if necessary) by the November 30, 2021 bar date was not feasible.

11. Therefore, the Debtor sought the retention of Linda Leali, as Attorney Ad-Litem, to locate unknown heir(s) of the Owner(s) Of Unit-Week Interest(s).

² On October 12, 2021, the Court extended the deadline to file Proof of Owner of Unit-Week Interest through November 30, 2021.

12. On November 10, 2021, the Court approved Ms. Leali's retention (the "Ad-Litem Order") [ECF #93], and specifically authorized her to (a) accept service of summons and complaint in the adversary proceeding on behalf of such unknown defendants. The order further provided for Ms. Leali to file the necessary responsive pleading; and (b) file an omnibus proof of owner of unit week interest ("Omnibus Claim") on behalf of all unknown Owners of Unit-Week Interests, pursuant to the Court's Ad-Litem Order.

13. Pursuant to the terms of the Ad-Litem Order, the Court required the Debtor to file and serve a notice (the "Notice to Identified Parties") to all such identified parties and provide them with an opportunity to amend the Omnibus Claim.

14. In accordance with her authority, on November 30, 2021 (and December 6, 2021), Ms. Leali filed an answer and affirmative defenses (which was subsequently amended) in the adversary proceeding. Ms. Leali also filed the omnibus proof of owner of unit week interest prior to the November 30, 2021, bar date.

15. On December 23, 2021, the Court entered Summary Final Judgment [Adv. ECF # 79], against all named Unknown Heirs of Owner(s) Of Unit-Week Interest(s). The judgment authorized the sale of all co-owned tenants in common Unit-Week interests, as well as the associated fees and costs.

16. On April 12, 2022, Ms. Leali filed her Attorney Ad-Litem Report (the "Report") [ECF # 113], which detailed her efforts in locating the unknown heirs of Owner(s) Of Unit-Week Interest(s). Her report lists her findings with respect to each.

Naming Convention Used for Unknown Heirs

17. During the above-mentioned proceeding, the naming convention used by the Debtor with respect to the Unknown Heirs of Owner(s) Of Unit-Week Interest(s)

included the words “Unknown Spouse, Heirs, Devisees, Grantees, Personal Representatives, Creditors and/or all Parties having, or claiming by through or against the following: [named descendant Owner of Unit-Week Interest(s)].” This naming convention was used because of past title insurance requirement³ that is no longer applicable, and a simple naming convention of Unknown Heir of the Owner(s) of Unit-Week should have been used instead to streamline the process of claim filing and distribution upon identification of rightful heirs.

RELIEF REQUESTED

A Claims Filing Deadline, and Objection and Disbursement Process Should be Established for All Identified Potential Heirs of Owner(s) of Unit-Week Interest(s)

18. Given Ms. Leali’s recent Report, a bar deadline should be established for identified potential heirs to amend the Omnibus Claim by filing their claim form (the Proof of Owner of Unit-Week Interest Form). The Disbursing Agent proposes to establish a bar date of **30 days** from date of service (by the Bankruptcy Estate) of the Notice to Identified Parties, for the potential heirs to file their individual amendments to the Omnibus Claim. In the event the potential heirs do not file an amended claim, the Disbursing Agent will follow the process outlined in the Sale Order - Distribution to Unknown Heirs. See ¶ 11(E), Sale Order.

19. The Bankruptcy Estate shall serve with the Notice to Identified Parties a Proof of Owner of Unit-Week Interest Form (which the Court previously approved), and is the same form used for the Omnibus Claim filed).

³ The additional surplus language was originally added at the request of the initial title company involved in the transaction. The title company was ultimately not used for the sale transaction.

20. Further, the Disbursing Agent proposes the following Claim objection and disbursement process with respect to identified potential heirs of Owner(s) of Unit-Week Interest(s):

- a. Deadline for Disbursing Agent to File and Objection or Notice of Distribution and Request for Entry of An Order Approving Disbursement: Disbursing Agent shall have up to 30 days following receipt of the Proof of Owner of Unit-Week Interest Form with supporting documents to Object to a claim made or file Notice of Distribution and Request for Entry of An Order Approving Disbursement.
- b. Supporting Documents: all Proof of Owner of Unit-Week Interest Forms submitted must be accompanied by documents to substantiate the claim.
- c. Objection to Claims by Unknown Heirs of Owner(s) of Unit-Week Interest(s): Disbursing Agent shall file, if Disbursing Agent determines as appropriate, an objection to the claim submitted by an unknown heir and may adopt the negative notice procedure for objection to claims provided under Local Rule 3007-1(D). Specifically, claimants shall be provided 30 days to respond to the objection following service of the same, and if no response is received by the Disbursing Agent within the foregoing period, the Court may grant the relief requested without a hearing upon submission of an order by the Disbursing Agent. The objection may adopt, in modified form, similar language as Local Form-24 pertaining to the negative notice procedure.
- d. Notice of Disbursement and Request for Entry of An Order Approving Disbursement: to the extent the Disbursing Agent determines upon review and evaluation of the documents received that a party filing a claim for Unit-Week is entitled to receive the distribution, the Distribution Agent will file a *Notice of Disbursement and Request for Entry of an Order Approving Disbursement*. The notice may be filed on negative notice, adopting Local Rule 9013-1(D)(2) and the language therein, whereby an order attached to the notice may be entered within 21 days if no response is filed by any interested party. The language of the bulletin included in the notice shall be modified to replace the word "motion" with "notice".

The Court Should Modify the Naming Convention to a Shortened Form

21. Given the reason detailed above, and the need to disburse to identified heirs, the Disbursing Agent request this Court modify the naming convention used with

respect to all unknown heirs to a shortened form of: "Unknown Heirs of [name of decedent Owner of Unit-Week Interest(s)]."

WHEREFORE, the Debtor respectfully requests that the Court enter an Order substantially in the form attached hereto as Exhibit "A": (a) granting the Motion; (b) establishing a bar date of 30 days from date of service of the Report for unknown heirs to file their claim; (c) approving the objection and disbursement process as provided herein; (d) modifying the naming convention as proposed herein; and (f) granting such other and further relief deemed necessary under the circumstances.

Dated: April 15, 2022.

ALIGNX LAW

Counsel to Maria Yip, Disbursing Agent
for the Bankruptcy Estate of Debtor, Palm
Beach Resort and Beach Club
Condominium Association, Inc.

12555 Orange Drive
Suite 4159
Davie, Florida 33330
Telephone: (954) 686-7399

By: _____/s/_____
IDO J. ALEXANDER
Florida Bar No. 51842
ija@alignxlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on April 15, 2022, to all parties on the list to receive e-mail notice/service for this case, via the Notice of Electronic Filing (which is incorporated herein by reference).

By: _____/s/_____
Ido J. Alexander

EXHIBIT "A"
(Proposed Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re: Case No. 21-15555 -EPK

PALM BEACH RESORT AND BEACH CLUB Chapter 11
CONDOMINIUM ASSOCIATION, INC.,

Debtor.

**ORDER GRANTING DISBURSING AGENT'S MOTION TO (A) ESTABLISH
DEADLINE FOR FILING CLAIMS BY, AND OBJECTION AND DISBURSEMENT
PROCEDURE FOR UNKNOWN HEIRS OF OWNER(S) OF UNIT-WEEK
INTEREST(S); AND (B) MODIFY NAMING CONVENTION USED FOR ALL
UNKNOWN HEIRS OF OWNER(S) OF UNIT-WEEK INTEREST(S)**

THIS MATTER came before this Court on _____, 2022 at ___:___
a.m./p.m. upon *Disbursing Agent's Motion To (a) Establish Deadline For Filing Claims By,
and Objection And Disbursement Procedure For Unknown Heirs Of Owner(S) Of Unit-
Week Interest(S); And (b) Modify Naming Convention Used For All Unknown Heirs Of
Owner(s) Of Unit-Week Interest(s)* (the "Motion") [ECF # ____]. The Court having
considered the Motion, having considered the Court file, having considered arguments of
counsel in support of the Motion, and for the reasons stated on the record, finds good
cause to grant the Motion.

Accordingly, the Court hereby **ORDERS** as follows:

1. The Motion is **GRANTED**.

2. Any identified potential heir listed in the Report⁴ filed by Linda Leali, the Attorney Ad-Litem [ECF #113] shall receive service of Notice to Identified Parties and a copy of the previously approved Proof of Owner of Unit-Week Interest Form (the “Claim Form”).

3. Any party served with the Report shall have up to **30 days from date of such service** to file an amended claim with the Disbursing Agent by mailing such claim to the same address as on the Claim Form or submitting it through the designated website address on the Claim Form.

4. The Court approves the following claim objection and disbursement process with respect to unknown heirs of Owner(s) of Unit-Week Interest(s) who submit an amended Omnibus Claim (as detailed in the Motion) form:

- a. Deadline for Disbursing Agent to File and Objection or Notice of Distribution and Request for Entry of An Order Approving Disbursement: Disbursing Agent shall have up to 30 days following receipt of the Proof of Owner of Unit-Week Interest Form with supporting documents to either Object to a claim made or file Notice of Distribution and Request for Entry of An Order Approving Disbursement.
- b. Supporting Documents: all Proof of Owner of Unit-Week Interest Forms submitted must be accompanied by documents to substantiate the claim.
- c. Objection to Claims by Unknown Heirs of Owner(s) of Unit-Week Interest(s): Disbursing Agent shall file, if Disbursing Agent determines as appropriate, an objection to the claim submitted by an unknown heir and may adopt the negative notice procedure for objection to claims provided under Local Rule 3007-1(D). Specifically, claimants shall be provided 30 days to respond to the objection following service of the same, and if no response is received by the Disbursing Agent within the foregoing period, the Court may grant the relief requested without a hearing upon submission of an order by the Disbursing Agent. The objection may adopt, in modified form, similar language as Local Form-24 pertaining to the negative notice procedure.
- d. Notice of Disbursement and Request for Entry of An Order Approving Disbursement: to the extent the Disbursing Agent determines upon review

⁴ Capitalized term not defined herein shall have the same ascribed meaning as in the Motion.

and evaluation of the documents received that a party filing a claim for Unit-Week is entitled to receive the distribution, the Distribution Agent will file a *Notice of Disbursement and Request for Entry of an Order Approving Disbursement*. The notice may be filed on negative notice, adopting Local Rule 9013-1(D)(2) and the language therein, whereby an order attached to the notice may be entered within 21 days if no response is filed by any interested party. The language of the bulletin included in the notice shall be modified to replace the word “motion” with “notice”.

5. The naming convention used for all Unknown Heirs shall be formally modified to: “Unknown Heirs of [name of decedent Owner of Unit-Week Interest(s)]”, instead of the former designation, which shall apply to any pleadings in the main proceeding and the adversary proceeding.

###

Submitted by:

Ido J. Alexander, Esq.
AlignX Law
12555 Orange Drive., Suite 4159
Davie, Florida 33330
Telephone: (954) 686-7399
E-Mail: ija@alignxlaw.com

Copies to:

Ido Alexander, Esq.