

**2008 Jan 24 PM 06:32**CLERK U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AKRONIN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AT AKRON

IN RE: CASE NO. 07-51261  
(Jointly Administered with Case Nos.  
EVERGREEN HOMES, LLC, *et al.* 07-51262 and 07-51263)

Debtors. CHAPTER 11

HON. MARILYN SHEA-STONUM

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**JOINT MOTION OF THE DEBTORS, DEBTORS IN POSSESSION AND THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO COMPROMISE  
CONTROVERSY WITH DANIEL RINGER**

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Now come the Debtors, Debtors in Possession and the Official Committee of Unsecured Creditors (the "Committee") of Evergreen Homes, LLC, Evergreen Investment Corporation, and Evergreen Builders, LLC (hereinafter collectively referred to as "Evergreen") herein and pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, and hereby move this Court for an Order approving the proposed settlement of claims from the Agreed Interim Order dated September 13, 2007 (Document No.227) as they pertain to Daniel Ringer. In support of this Joint Motion, the Debtors, Debtors in Possession and the Committee respectfully represent as follows:

**MEMORANDUM IN SUPPORT OF MOTION**

1. On April 29, 2007 the above-referenced Debtors filed Voluntary Petitions under Chapter 11 of the Bankruptcy Code, being Evergreen Homes, LLC, Case No. 07-51261, Evergreen Investment Corporation, Case No. 07-51262 and Evergreen Builders, LLC,

Case No. 07-51263. The Debtors have been operating their business as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108 (the “Bankruptcy Code”).

2. On April 30, 2007, Evergreen Homes filed a Motion for Joint Administration of the respective bankruptcies of the Debtor Affiliates. On September 12, 2007, the Court entered an Order Granting Motion of the Debtors for Joint Administration of the Chapter 11 Bankruptcy Cases of Evergreen Homes, LLC, Evergreen Builders, LLC and Evergreen Investment Corporation.

3. David Willan was the managing member of Evergreen Homes, LLC and Evergreen Builders, LLC. David Willan was also the President of Evergreen Investment Corporation.

4. The Official Committee of Unsecured Creditors represent the interests of unsecured creditors in the Evergreen bankruptcy cases. During its ongoing consultation with the Debtors and investigation into its affairs and particularly the management of David Willan, the Committee discovered business records of Evergreen which disclosed that David Willan caused Evergreen Investment Corporation to issue a \$750,000.00 line of credit to Brittain Holdings, LLC (“Brittain Holdings”) in April, 2006. Brittain Holdings is a limited liability company owned solely by David Willan. Entirely with said funds, Brittain Holdings purchased numerous parcels of real property, including but not limited to the purchase of 1110 Brittain Road, Akron, Ohio (“1110 Brittain Road”) on May 22, 2006.

5. On March 16, 2007, Brittain Holdings transferred 1110 Brittain Road to Daniel Ringer for \$525,000.00 evidenced by two promissory notes and mortgage deeds from Daniel Ringer in favor of Brittain Holdings.

6. Despite the terms of the notes and the covenants set forth in the mortgage deeds, Daniel Ringer has not made any payments to Brittain Holdings. Furthermore, Brittain

Holdings has not made any payment to Evergreen Investment Corporation on the line of credit it used to purchase 1110 Brittain Road.

7. In large part due to the transactions outlined above, on August 10, 2007, the Committee filed a Motion for an Order to Appoint a Chapter 11 Trustee to remove David Willan from any and all capacity with Evergreen and for the appointment of a Chapter 11 Trustee in his stead.

8. The hearing on the Motion was scheduled for September 10, 2007. The Debtors, the Committee, Capital Crossing Bank, a division of Lehman Brothers Bank, FSB, the United States Trustee, Brittain Holdings, David Willan and Daniel Ringer all entered an appearance at the hearing. Following negotiations, the parties advised the Court that an agreement had been reached, the terms of which were memorialized in the Agreed Interim Order dated September 13, 2007 (Document No. 227), attached hereto as Exhibit A.

9. Acknowledging that the purchase of 1110 Brittain Road was consummated by Brittain Holdings through funds wholly derived from its Evergreen Investment Corporation line of credit, David Willan and Brittain Holdings agreed to convey all of its then existing assets to Evergreen Investment Corporation, including but not limited to the notes payable from Daniel Ringer and assignment of the mortgage deeds from Daniel Ringer's purchase of 1110 Brittain Road.

10. Daniel Ringer also agreed to execute an amended and restated promissory note and to begin making monthly payments to Evergreen Investment Corporation for the purchase of the property.

11. Despite the elapse of four months, David Willan and Brittain Holdings failed to execute the required paperwork to comply with this Court's Order and have not conveyed a single asset to Evergreen Investment Corporation. In addition, Daniel Ringer has failed to make any payment to Evergreen Investment Corporation, purportedly due to Brittain

Holdings' failure to assign all of its assets to Evergreen Investment Corporation as set forth in the Agreed Interim Order

12. On May 4, 2007, Mary E. Willan obtained an Order from the Summit County Court of Common Pleas, Domestic Relations Court, Case No. DR 2006-10-3254, which purports to restrain Daniel Ringer from transferring any asset received from any entity in which David Willan exercised control. Said Order was ostensibly obtained under the assertion that Mary Willan was entitled to ownership or a portion thereof of 1110 Brittain Road. It is noted however, that Brittain Holdings purchased 1110 Brittain Road solely from funds received from its Evergreen Investment Corporation line of credit.

13. Despite efforts to cause compliance, the Committee has been advised in writing by counsel that David Willan and Brittain Holdings will not take any steps to comply with the Agreed Interim Order during the pendency of a pending criminal case.

14. In lieu of his obligations set forth in the Agreed Interim Order yet still abiding by the spirit of the Agreed Interim Order and to mitigate his damages, Daniel Ringer executed a quitclaim deed conveying his interest as fee owner of 1110 Brittain Road to Evergreen Investment Corporation. Said quitclaim deed is currently being held in escrow by Land America Lawyer's Title pending further Order of this Court.

15. Upon the recordation of the quitclaim deed and in lieu of Brittain Holdings assigning its notes and mortgage deeds to Evergreen Investment Corporation, Evergreen Investment Corporation, the Debtors and the Committee request that this Court order that the notes and mortgages be cancelled of record to facilitate this settlement. Furthermore, Evergreen Investment Corporation requests that this Court order that Daniel Ringer be absolved of any claims in the Domestic Relations Court as a result of this Motion and proposed Order.

16. This Motion shall not be construed as an admission by any party nor does it affect any claims or potential claims that one party may have against another except as herein provided. This Motion is being filed in order to preserve and protect the value of the property located at 1110 Brittain Road.

### **RELIEF REQUESTED**

17. By this Motion, the Debtors, Debtors in Possession and the Committee seek an Order authorizing the transfer of 1110 Brittain Road free and clear from any and all claims except those claims of public record excluding the notes and mortgages of Brittain Holdings held on file with the Summit County Fiscal Office, Recorder Division and further authorizing Land America Lawyer's Title to record the quitclaim deed transferring 1110 Brittain Road from Daniel Ringer to Evergreen Investment Corporation. Movants further request that the Court order the transfer of all other real and personal property held in the name of Brittain Holdings including the property located at 429 McGowan Street, Akron, Ohio and 741 Roselawn Avenue, Akron, Ohio subject to the claims of record on file with the Summit County Fiscal Office, Recorder Division.

### **APPLICABLE AUTHORITY**

18. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."

19. The decision whether to approve a proposed settlement lies within the sound discretion of the bankruptcy court. In re Albert-Harris, Inc., 313 F.2d 447, 449 (6th Cir. 1963); In re Parkview Hospital-Osteopathic Medical Center, 211 B.R. 603 (Bankr. N.D. Ohio 1996). This rule affords the Court broad authority to consider and approve compromises and settlements. See In re Blue Coal Corp., 47 B.R. 758, 761 (Bankr. M.D. Pa. 1985). In deciding whether to approve a proposed settlement, the bankruptcy court must determine

whether the settlement is in the best interest of the estate. In re American Reserve Corp., 841 F.2d 159, 161 (7th Cir.1987).

20. In conducting a hearing under Rule 9019(a), the bankruptcy court must determine whether the proposed compromise is fair and equitable. Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424, 88 S.Ct. 1157, 1163, 20 L.Ed.2d 1 (1968). The operative standard for evaluating a proposed settlement is whether the compromise is in the best interest of the estate and its creditors and is not attended by fraud or other inequitable circumstances that would shock the court's conscience. In re Charter Co., 72 B.R. 70, 72 (Bankr. N.D. Fla. 1987). In making this determination, a bankruptcy judge is required to apprise herself "of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated." Monus v. Lambros, 286 B.R. 629, 637 (N.D. Ohio 2002) (citing TMT Trailer Ferry, Inc., 390 U.S. at 424, 88 S.Ct. at 1163; and American Reserve Corp., 841 F.2d at 161).

To this end, the bankruptcy judge should:

[F]orm an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

TMT Trailer Ferry, Inc., 390 U.S. at 424-25, 88 S.Ct. at 1163.

21. The proposed settlement is fair and equitable and will provide maximum benefit for the Debtors' estates and creditors. After careful analysis of the merits of the action and in light of the obstacles as it regards Daniel Ringer's ability to comply with the terms of the Agreed Interim Order, the Debtors, Debtors in Possession and the Committee submit that settlement on the terms set forth herein will achieve several benefits, which greatly outweigh

the uncertainty, cost, inconvenience and delay of litigation. Accordingly, the parties submit that the proposed settlement is in the best interest of all parties.

WHEREFORE, the Debtors, Debtors in Possession and the Official Committee of Unsecured Creditors respectfully request that the Court enter an Order approving the Motion to Compromise Controversy with Daniel Ringer, authorizing the transfer of 1110 Brittain Road, Akron, Ohio and any other property owned by Brittain Holdings, LLC free and clear of all claims except those claims of public records excluding the notes and mortgages of Brittain Holdings, LLC held on file with the Summit County Fiscal Office, Recorder Division and further authorizing Land America Lawyer's Title to record the quitclaim deed transferring 1110 Brittain Road from Daniel Ringer to Evergreen Investment Corporation and further pray that said Order be issued without any formal hearing herein, unless any creditor or interested party requests such hearing and/or objects to same within twenty (20) days of receipt of this Motion.

Dated: January 24, 2008

Respectfully submitted,

/s/ Howard E. Mentzer  
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### **CERTIFICATION OF SERVICE**

A copy of the foregoing Joint Motion of the Debtors, Debtors in Possession and the Official Committee of Unsecured Creditors to Compromise Controversy with Daniel Ringer was filed electronically and sent via the court's electronic service or by U.S. mail this 24<sup>th</sup> day of January, 2008 to the following:

***Served via U.S. Mail:***

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