John F. O'Reilly, Esq.
Nevada Bar No. 1761
Timothy R. O'Reilly, Esq.
Nevada Bar No. 8866
O'REILLY LAW GROUP, LLC
325 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 382-2500
Facsimile: (702) 384-6266
E-Mail: tor@oreillylawgroup.com

Christian C. Onsager (CO Bar No. 6889)
ONSAGER, STAELIN & GUYERSON, LLC
1873 S. Bellaire St., Suite 1401
Denver, Colorado 80222
Phone # : (303) 512-1123
Fax # (303) 512-1129
E-mail address: consager@osglaw.com
Counsel for Transcontinental Corporation
and Transcontinental Properties, Inc.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAKE AT LAS VEGAS JOINT VENTURE, LLC, et al. Debtors and Debtors in Possession.	CASE NO.: BK-S-08-17814-LBR Chapter 11 Jointly Administered Under Case No.: BK-S-08-17814-LBR **MOTION TO DISMISS BANKRUPTCY CASES** **(AFFECTS ALL DEBTORS)** **Hearing Date: October 2, 2009** **Hearing Time: 11:00 a.m.**

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TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Transcontinental Corporation and Transcontinental Properties, Inc. (hereinafter together, "Transcontinental"), through its undersigned counsel, and for its Motion to Dismiss Bankruptcy Cases (the "Motion"), states as follows:

I.

STATUS OF CASE

These jointly administered bankruptcy cases were filed in July 2008. Now, over a year later, after repeated extensions, the Debtors are out of the exclusivity period, no plan of reorganization has been forthcoming and over $6.5 million has been expended in professional fees.

II.

SUMMARY OF AND BASIS FOR MOTION

Pursuant to 11 U.S.C. §1112(b), a Chapter 11 bankruptcy case should be dismissed when cause exists. Among other indicia, "cause" exists when a filing is not made or maintained in good faith or where the Debtors have no ability to reorganize. No justifiable reason exists for these bankruptcy cases. There is no business to rehabilitate, and creditors suffer as the estate is further diminished without action by the Debtors. Thus, as shown herein, cause exists for dismissal of these jointly administered cases.

III.

INTRODUCTION

In July 2007, Credit Suisse extracted from the Debtors and their former owners a waiver of the right to file Chapter 11 cases. The Former Equity Owners agreed to this waiver because they strongly believed that Chapter 11 filings would devalue and taint the Project and injure the vendors and creditors with whom they had been working for over 15 years and further, would harm the

interests of all stakeholders including current property owners within the Project, tenants, club members, and the hotel ownership. In furtherance of this belief, the Former Equity Owners accepted the requirement of Credit Suisse and the principal participant in the secured debt, Highlands Capital Management, to allow the Project to be run by Fredrick Chin of Atalon starting in the 4th quarter of 2007. During this period, Frederick Chin directed work that resulted in additional vendor debt.

Consistent with their intent to avoid bankruptcy filings for the Project, the Former Equity Owners transferred 100% of the equity interests to Credit Suisse's nominee, effective January 2, 2008. A few months later, despite its claim to a senior lien on all of the Debtors' assets and despite the fact that it contended that there was no equity in them, Credit Suisse caused these cases to be filed.

The mere circumstances of these filings, made for transparently insufficient reasons, are enough to conclude that they were not made in good faith. Additionally, events (or the lack thereof) since the filings eliminate any lingering possibility of a good faith motive. Further, the prospect for reorganization looks no better—the product of thirteen months' effort in these cases is primarily professional fees of $6.5 million[1] and a cumulative loss of approximately $65 million. No proper purpose is or has been served by these cases. As a result, the best interests of the creditors and all other interested parties are served by their prompt dismissal.

This Motion is made and based on the Legal Memorandum set forth below, the record in these cases and any arguments and evidence presented at or prior to the hearing on this Motion.

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[1] This figure of $6.5 million does not include the substantial fees paid to Atalon.

IV.

LEGAL MEMORANDUM

A. Significant Pre-petition Events.

Approximately twenty-two years ago, Ronald F. Boeddeker founded Lake Las Vegas Resort (hereinafter "Project"). Mr. Boeddeker was ultimately joined by other equity investors. Together, these former owners are referred to herein as the "Former Equity Owners."

In the years following the initial Project concept and land acquisition in 1987, the Former Equity Owners invested hundreds of millions dollars of their own funds in development of the Project. As a direct result of this investment by the Former Equity Owners, the Project in mid-2004 was solidly solvent, was current on its obligations, and was operating with very modest debt of approximately $48 million.

Against this backdrop, Credit Suisse approached the Former Equity Owners and proposed a credit facility that would pay off the then existing debt and allow the Former Equity Owners, at long last, to appreciate a return on the hundreds of millions of personal funds they had invested. In furtherance of this loan, Credit Suisse obtained an appraisal of the Project for approximately $1.2 billion. The Former Equity Owners agreed to Credit Suisse's proposal, and, on November 1, 2004, closed on Credit Suisse loans totaling approximately $560 million. The loans were secured by first and second liens on substantially all personal and real property, except the assets of the golf courses. The loan proceeds were used first to repay the previously existing bank debt of approximately $48 million, then pay Credit Suisse hefty loan and other fees, and finally, after more than a decade of investment, at long last to provide the Former Equity Owners a reimbursement on the hundreds of millions of their own funds that had been invested in the Project.

For the next two years, the real estate market remained robust, and the Project was in sound financial condition with the ability to meet its financial obligations into 2006. In mid-2006, the real

estate market in Las Vegas began to cool, and builders began to curb their lot take down commitments. As a result, cash flow tightened. Nonetheless, the Project continued to meet its financial obligations to its creditors.

By March 2007, the debt to Credit Suisse had been paid down to approximately $500 million, but the slowdown in land sales continued into 2007, and, after many months of timely performance, the Debtors were unable to meet the sales covenants required by the Credit Suisse loan agreement. Even then, the Debtors, still under the control of the Former Equity Owners, remained current in their payments.

Nonetheless, Credit Suisse elected to declare a non-monetary default due to the failure to meet sales covenants. In April 2007, Credit Suisse obtained a FIRREA appraisal indicating that the Project had an all-in value of $840 million. At that time, Credit Suisse was owed approximately somewhere between $540 million and $600 million.

In July 2007, liquidity had become a material issue largely because builders, such as Toll Brothers, Innovative Resort Communities, LLC, and Engle Homes, were unable to perform on their commitments to purchase lots, build houses, and pay down their notes to the Debtors. As a condition to a short extension of the credit facilities, Credit Suisse demanded and received a waiver by the Debtors and the Former Equity Owners of the ability of the Debtors to file Chapter 11 proceedings. The Debtors had, indeed, evaluated the possibility of bankruptcy filings, but the Former Equity Owners were strongly opposed to this course of action. They felt that neither interests of the creditors nor the members of the communities they had built would be served by such an action. The Former Equity Owners were also confident of closing a pending transaction that would have realized $90 million and would have provided the liquidity necessary to continue.

When that pending transaction did not close (through no fault of the Former Equity Owners), the Debtors were unable to make the September, 2007 payment to Credit Suisse. This

September 2007 event was the first monetary default on the Credit Suisse loans since their inception in 2004. The Former Equity Owners agreed to the request of Credit Suisse to turn control of the Debtors over to the restructuring officer , namely the Atalon Group, LLC and Fredrick Chin. Chin directed the Debtors to continue with the development with the promise that Credit Suisse would pay the trade vendors.

Consistent with their desire to avoid bankruptcy filings, the Former Equity Owners also agreed to transfer 100% of the equity ownership interests in the Debtors to Credit Suisse or its nominee effective January 2, 2008, and agreed to a non-interference covenant as well. No debt was forgiven as a result of this transfer. Former Equity Owners continually urged Credit Suisse to pay the modest outstanding unsecured debt and mechanics liens for the good of the Project Instead, Credit Suisse, through Atalon, directed management to continue development, then ultimately refused to pay the trade vendors as promised (even though it was well capable of doing so).

In 2004, when made, the Credit Suisse loans were participated out to approximately eighty five participants, one of whom was Highland Capital Management, L.P. ("Highlands"), a hedge fund. In the ensuing years, the Former Equity Owners are informed and believe that Highlands (and investment funds under its control) bought out the majority of other participants, undoubtedly at a discount.

As of July, 2008, the Debtors' debt picture had not changed: except the three golf courses, Credit Suisse had a senior security interest in almost all of the assets of the Debtors and was effectively the owner of 100% of the equity in the Debtors as well. The trade vendor claims appear to have been approximately $15 million,[2] a number dwarfed by the $675 million Credit Suisse/Highlands claims it was owed in July 2008. A substantial portion of this debt arose after Credit Suisse was making decisions for Debtor and despite the representations that Credit Suisse

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[2] Declaration of Chin at p. 12, ¶ 28, Docket no. 12.

would pay the vendors. Atalon's not insubstantial bills were promptly paid by Credit Suisse when submitted while many a creditor waited in vain for its check. Then in July 2008, despite the fact that it already had control of all of the assets even without a foreclosure, to the surprise and shock of the Former Equity Owners, Credit Suisse caused all of the Debtors to file the present Chapter 11 cases. According to Declaration of Fredrick Chin, the primary reasons for the filings were the need for DIP financing and the preservation of the three golf courses - the only assets not encumbered by Credit Suisse's senior lien. .

B. Significant Post-petition Events.

The Debtors filed these Chapter 11 cases on July 17, 2008. One of the first day motions was for a DIP lending facility of approximately $127 million. The motion would not have been unusual except for the fact that, in essence, Credit Suisse was lending itself the money, a substantial portion of which is believed to have been used to repay itself for a portion of the existing credit facility. At that point, Credit Suisse had been in effective control of the Debtors since November, 2007, and in legal control since January 2, 2008, and every material feature of the DIP credit facility was already in place prepetition by virtue of the previous loan documents. In other words, the same result could have been achieved outside of Chapter 11. In addition, the Debtors moved for the usual plethora of first day orders. Again, all of these authorities and powers were already exercisable outside of bankruptcy by Credit Suisse as the owner of the Debtors.

Some months after the filings, the Debtors abandoned the first of the three golf courses that they had claimed were a primary reason for the filings in the first place. Debtors then stipulated to relief from stay to allow Carmel to foreclose on the Reflection Bay Golf Course and Textron to foreclose on the Southshore Golf Course.

In December, 2008, the Debtors stipulated with the Unsecured Creditors Committee to permit the Committee to pursue LID funds, a stipulation ultimately approved by the Court. Among

other issues that remain unexplained in these cases is why the action is being prosecuted by the Debtors and the Committee, given that Credit Suisse maintained and continues to maintain that it has a prior perfected security interest in this asset (a point that ultimately required the joinder of Credit Suisse in the litigation).

Other than a number of motions for relief from stay, and the applications of the estate's professionals for compensation, not much appears to have happened in these jointly-administered cases. Approximately nine months into the case, the Debtors proposed a procedure for resolving certain mechanic's liens (all of which could have been done easily under state law). Then, as recently as July 28, 2009, the Debtors sought an extension through and including October 30, 2009 to consider and determine whether it would file notices of removal of some 24 pending civil proceedings pursuant to Bankruptcy rule 9027.[3] No reason or explanation for the many months of inactivity regarding these decisions has been offered other than "we have been busy."

By June, 2009, the Debtors had requested and received five extensions of the exclusive period to formulate and propose a plan of reorganization, with no plan resulting. As of the date of filing of this Motion to Dismiss, the Debtors are now out of exclusivity. To date, the Debtors have incurred more than $6.5 million in professional fees, close to one half of the estimated trade vendor claims amount.[4] Moreover, the June, 2009 Monthly Operating Reports indicate the Debtors have lost somewhere in the range of $65 million since the filing of these cases.

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[3] Docket No. 1378.

[4] Declaration of Chin at p. 12, ¶ 28, Docket No. 12.

V.

ARGUMENT

A Chapter 11 bankruptcy case should be dismissed when cause exists. 11 U.S.C. § 1112(b); *In re Stolrow's, Inc.*, 84 B.R. 167, 171 (B.A.P. 9th Cir. 1988). Cause exists when a bankruptcy case is not filed and maintained in good faith. *In re Stolrow's, Inc.*, 84 B.R. at 171; *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). Further, cause for dismissal exists under 11 U.S.C. § 1112(b)(4)(A) where Debtors have no ability to reorganize. As demonstrated below, no proper purpose for these bankruptcy cases exists, there is no business to rehabilitate, and creditors suffer as the estate is diminished without action by the Debtors. As a result, cause exists and these cases should be dismissed

A. Lack Of Good Faith.

The test for good faith is "whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis. *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). A debtor has the burden of demonstrating its good faith in filing and maintaining a Chapter 11 case. *In re Strug-Division, LLC*, 375 B.R. 445, 448 (Bankr. N.D. Ill. 2007). No single fact is necessary or dispositive of good faith, but factors for measuring good faith include:

(1) The debtor has only one asset.

(2) The secured creditors' lien encumbers that asset.

(3) There are generally no employees except for the principals.

(4) There is little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments.

(5) There are few, if any, unsecured creditors whose claims are relatively small.

(6) There are allegations of wrongdoing by the debtor or its principals.

(7) The debtor is afflicted with the "new debtor syndrome" in which a one-asset equity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors.

(8) Bankruptcy offers the only possibility of forestalling loss of the property.

(9) The debtor has an ongoing business to reorganize.

(10) The case is essentially a two party dispute capable of prompt adjudication in state court.

See In re Stolrow's, Inc., 84 B.R. 167, 171 (B.A.P. 9th Cir. 1988); *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995). Thus, the subjective good faith of a debtor is measured by the bona fides of the conduct of the debtor. Applying those factors to this case demonstrates the absence of good faith in filing and continuing these cases.

(1) The debtor has only one asset.

Although the Project consists of numerous pieces, it is, at the end of the day, only one asset. Moreover, it is one asset with one overriding senior secured lender, who just happens to be the party that controls the Debtors as well. It would be difficult to imagine a more unified situation.

(2) The secured creditors' lien encumbers that asset.

As noted, there is only one primary secured creditor: Credit Suisse.

(3) There are generally no employees except for the principals.

It may be convenient to consider all the Debtors together, but this case is jointly administered, not substantively consolidated. A number of the Debtors do not have any separate employees.

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(4) There is little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments.

The Debtors themselves produce little or no cash flow and there are no available sources of income. The Debtors are kept alive solely by their senior lender, who also happens to be, for all practical purposes, the Debtors themselves. Indeed, the Debtors have lost over $65 million during the pendency of their cases. Whereas these losses have been covered by the DIP financing, the DIP lender is the same as the owner. In other words, Credit Suisse as the senior creditor could have achieved the same result for itself as the owner and these Chapter 11 cases were entirely unnecessary.

(5) There are few, if any, unsecured creditors whose claims are relatively small.

The scheduled unsecured creditors amounts to somewhere in the range of $15 million, which is dwarfed by the $600 million owed to Credit Suisse.

(6) There are allegations of wrongdoing by the debtor or its principals.

Credit Suisse was the principal of the Debtors for seven months before the petitions were filed. It became the principal as the result of what are claimed to be predatory lending practices practiced by Credit Suisse.

(7) The debtor is afflicted with the "new debtor syndrome" in which a one-asset equity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors.

The Debtors *per se* are not "new debtors" in the traditional sense, however the equity interests were acquired by Credit Suisse's designee shortly before the filing. These cases present the novel circumstance of a lender creating an entity to control the Debtors to give it the sham appearance of independence. The lender had effective control over the affairs of the Debtors and their assets for seven months prior to the filing of the petitions. If that control was not sufficient for its purposes, it could have foreclosed and continued to operate all of the assets directly. The exact

reason for the lender's attempt to conduct the charade of these Chapter 11 cases, and what the lender originally sought to gain, remains a mystery, but in all events appears to be devoid of any legitimacy.

In this sense, the first day declaration of Mr. Chin must be read with a certain sense of bemusement. He is management for Credit Suisse, as the 100% owner of the Debtors, yet speaks as if he was somehow independent management for the Debtors. He states that prior to filing, he approached the "Existing Lenders" for additional financing, as if the Existing Lenders were not, in essence, the Debtors themselves.[5] It is much like watching a person talk to himself in the mirror, trying to convince his audience that the voice coming from the mirror is not his own.

(8) Bankruptcy offers the only possibility of forestalling loss of the property.

In the unique circumstances of these Debtors, this factor can be safely turned on its head. The real point here is that bankruptcy was not necessary to forestall any loss; the lender which, as the equity holder of the Debtors, caused the filings, would have acquired all of the property just by foreclosing at state law or giving itself a deed in lieu of foreclosure, and agreeing to forebear on itself if it desired to maintain the status quo.

Generally, the purpose for bankruptcy must be the "preservation and rehabilitation of a going concern or the maximizing of the value of a debtor's estate for the benefit of creditors through an orderly liquidation." *In re DCNC North Carolina I, LLC*, 407 B.R. 651, 661 (Bankr. E.D. Pa. 2009). At the outset of the case, the Debtors/Credit Suisse gave two explanations to justify these Chapter 11 filings. The first was the need for DIP financing, yet the owner of the Debtors was the existing lender, and perfectly capable of providing such financing itself. At best, the explanation may be that a different syndicate of lenders needed to provide the additional financing because there was a squabble among the existing senior creditor syndicate. However,

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[5]Docket No 12, Chin Declaration , ¶118.

since the senior creditor syndicates are also the equity holders, the situation is akin to using Chapter 11 to resolve a dispute between the equity holders, a purpose that has long been considered bad faith. . *See In re Coastal Cable T.V., Inc.*, 709 F.2d 762, 765 (1st Cir. 1983) (good faith lacking where only dispute was between competing equity holders).

The second reason given for the Chapter 11 filings, namely the need to preserve the golf courses also rings hollow. First, two of the golf courses are owned by entities other than Lake Las Vegas Joint Venture (The Vineyard at Lake Las Vegas, which owns The Falls course, and Southshore Golf Club, which owns the Southshore course). It was only necessary to file on behalf of these two entities in order to achieve essentially the same purpose. Second, notwithstanding the claim that it was necessary to prevent foreclosure of the golf courses, the Debtors fairly quickly after the petitions were filed gave up the first of the golf courses and made clear their intention (which they later made good on) to relinquish the second of the golf courses. Were this a situation where the Debtors/Credit Suisse had had insufficient time to evaluate the need for the golf courses, it would be one thing. However, here, the lender had seven months of control and management to make this evaluation. Thus, even if saving the golf courses would be an appropriate subject of Chapter 11 filings for all fifteen of the Debtors, that stated purpose for the filings is questionable because Debtors abandoned two of the three golf courses months after these cases were commenced.[6] In all events, "saving the golf courses" would benefit only one real party in interest: the lender that owns the Debtors, that has a lien that dwarfs the value it claims for its collateral, that claims a balance due that dwarfs all other creditors, and that was and is fully capable

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[6] Even if one can believe the claim of the need to file all fifteen Debtors to save the golf courses, that purpose was mooted by Debtors' relinquishment of the courses.

of satisfying the obligations that come senior to it on these particular assets. No reason exists for the other Debtors to be in bankruptcy except to further the interests of Credit Suisse.[7]

(9) The debtor has an ongoing business to reorganize.

This factor, as applied, is the touchstone of the good faith analysis—the "key test of good faith in Chapter 11 is whether the debtor has proposed or can propose a legally and economically feasible plan of reorganization." *In Matter of Strug-Division, LLC*, 375 B.R. 445, 449 (Bankr. N.D. Ill. 2007) citing *In re Marsch*, 36 F.2d 825, 828 (9th Cir. 1994); *In re Northport Marina Assoc.'s*, 136 B.R. 903, 910 (Bankr. E.D.N.Y. 1992) (determining the ultimate question is "did the Debtor file its petition without the ability or reasonable expectation of reorganization." Citing *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir.1986)). Transcontinental does not contend there is no business here to reorganize. Rather, what is clear is that any reorganization is solely for the benefit of the secured creditor, who is also the Debtors.

Here, the picture presented in the Debtors' schedules shows there is no equity to reorganize. First, the principal real estate assets are fully encumbered—the estimated value of the real estate assets of Lake Las Vegas Joint Venture, LLC is approximately $147 million, while the secured debt to Credit Suisse totals more than $696 million. The unsecured creditors' trade claims in the amount of approximately $15 million are dwarfed by the apparently unsecured portion of the secured lender's claim of $549 million. The Debtors' monthly operating reports also show no cash except what comes from the DIP loan, and no income. Indeed, the loss to date totals approximately $65 million.

Where it is not the business to be saved, but a particular interest in an asset, good faith is lacking. *See In re Humble Place Joint Venture*, 936 F.2d 814, 817 (5th Cir. 1991) (good faith lacking where debtor had substantial cash to pay unsecured creditors, but filed to preserve

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[7] Even if one can believe the claim of the need to file all fifteen Debtors to save the golf courses, that purpose was mooted by Debtors' relinquishment of the courses.

speculative equity). This is the converse of the requirement that the purpose of reorganization must be the "preservation and rehabilitation of a going concern or the maximizing of the value of a debtor's estate for the benefit of creditors through an orderly liquidation." *In re DCNC North Carolina I, LLC*, 407 B.R. 651, 661 (Bankr. E.D. Pa. 2009). Absent the preservation of a going concern or the orderly liquidation of assets, the result can only be "attempting to unreasonably deter and harass creditors", which the Ninth Circuit admonished against in *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). The use of Chapter 11 in this circumstance is an abuse.

(10) The case is essentially a two party dispute capable of prompt adjudication in state court.

These cases cannot even be characterized as two party disputes; they are instead one party disputes: Credit Suisse, as owner, arguing with itself, as senior lender. Good faith is absent where the bankruptcy resolves only a two-party dispute. *See In re Coastal Cable T.V., Inc.*, 709 F.2d 762, 765 (1st Cir. 1983) (good faith lacking where only dispute was between competing equity holders); *In re Muskogee Environmental Conservation Col,* 236 B.R. 57, 66-69 (Bankr. N.D. Okla. 1999) (good faith lacking where the only dispute was between two parties). This is so because the bankruptcy courts are courts of equity and the good faith requirement prevents the "abuse of the bankruptcy process, or the rights of others, involving conduct or situations peripherally related to the economic interplay between the debtor and the creditor community." *In re Victory Constr. Co., Inc.*, 9 B.R. 549, 559 (Bankr. C.D. Cal. 1981).

Even if one takes into account the comparatively small amount of unsecured debt and mechanics lien claimants, the dispute devolves into a dispute between creditors, not one between an independent Debtor and its creditors. As such, these proceedings are not about the Debtors rehabilitating their business, but at best are about the senior secured lender resolving disputes with other creditors ultimately for its own benefit.

In the most generous light, one might suggest Credit Suisse/Highland accomplished the DIP loan to squeeze down the interests of the unsecured creditors, but their interests are already so remote as to render this of dubious materiality, except for delaying resolution of various mechanics lien claims.

Indeed, this situation calls into question the jurisdiction of this Court. It is well-established that a bankruptcy court will not take jurisdiction over a dispute solely between two creditors. In these cases, the senior secured creditor has created the illusion that the Debtors are independent entities with their own interests. This is an intolerable charade. This case is only about the senior secured creditor resolving disputes with other creditors. When one stops elevating form over substance, the only parties with any economic interest in this case are the senior secured creditors in the guise of the Debtors and the other creditors. One example of how this charade is maintained is the adversary proceeding involving the LID proceeds (Lake Las Vegas Joint Venture et al v. LID Acquisition, LLC, adversary number 09-01031-lbr). This case was ostensibly filed by certain Debtors to frustrate the rights of LID Acquisition in the LID proceeds. However, Credit Suisse was not named in the case, despite its contention that it had a prior perfected security interest in these proceeds, leaving the Debtors with no recognizable interest over which to litigate (since neither the Debtors nor the Creditors' Committee has challenged Credit Suisse's claimed lien). It would be difficult to find a better example of using bankruptcy proceedings to improperly settle a dispute between two creditors, and using the Debtors as puppets to accomplish it is a prime example of the abuse that these cases are.

Further, one of the two reasons that the Debtors claim justified the filings is the need for DIP financing. It is not entirely clear why this is the case, given that the owner was entirely capable of lending to itself. The Debtors may contend that the original lender syndicate did not want to advance any more funding, therefore necessitating a second syndication for the DIP financing, but

even this explanation fails to create a good faith reason for filing. In the circumstances of these cases, the inability to obtain consent of the original syndicate amounts to nothing more than squabbling between the existing equity owners. The use of bankruptcy proceedings to resolve such disputes is bad faith. *See In re Coastal Cable T.V., Inc., supra.*[8]

Thus, the bona fides of the Debtors' conduct, as measured by the good faith factors, show a poor fit between their purpose for these bankruptcies and the intended purpose of Chapter 11 of the Bankruptcy Code—to rehabilitate a viable business. In short, these factors point to the absence the good faith required to initiate and maintain a Chapter 11 case. Perhaps most importantly, Debtors have not offered the hope of any change of course in these cases.

B. Cause Under 11 U.S.C. § 1112(b)(4)(A): No Likelihood of Reorganization.

Congress expressly provided for the dismissal of a case for cause when there is "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). The lack of meaningful progress in these cases despite the centralized power in the secured lender show a lack of a legitimate purpose for the bankruptcy, and, therefore, a lack of good faith.

In addition to appropriate subjective goal for the bankruptcy, good faith and the Bankruptcy Code require the goals of the particular bankruptcy be achievable. *In re DCNC North Carolina I, LLC*, 407 B.R. 651, 661 (Bankr. E.D. Pa. 2009); 11 U.S.C. § 1112(b)(4)(A). More specifically, the "inability to propose a feasible reorganization or liquidation plan provides "cause" for dismissal or conversion of a chapter 11 case on request of an interested party." *Id.* at 655.

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[8] Although the information was volunteered to the Court, the members of the two lending groups have never been disclosed. One strongly suspects that one or more members of the first syndicate were willing to advance funding but that some were not. The purpose of these chapter 11 cases might then be to permit the willing member(s) to force their preference on the unwilling, not for the benefit of the creditors as a whole, but only to enhance their position as the senior lender.

The thirteen months of this case with no plan and no progress show Debtors can accomplish nothing. This case has been kept on life support only through the infusion of capital by the secured lender to the very same Debtors/equity holders it also owns or controls. There is no plan of reorganization and Debtors appear to recognize their failure, as they have allowed the exclusivity period to lapse without a further request for extension. Thus, these Debtors have demonstrated the inability to reorganize.

VI.

CONCLUSION

The inherent irony of these Chapter 11 cases is difficult to overstate. The Former Equity Owners chose to give up their equity interests and their control because they felt that a Chapter 11 case would not be in the interests of the creditors, but rather, that the Project was best handled by the real party in interest, the senior secured lender. Little could they know that the senior secured creditor would do what they had so carefully tried to avoid, much to the detriment of the former owners, the vendors and creditors, and the residents of the Lake Las Vegas community.

The course of these Chapter 11 cases has proven the Former Equity Owners to be correct: after 13 months, these cases have produced little, if anything, other than $6.5 million in professional fee expenses, which alone would have made a sizeable dent in the amount of unsecured claims. These cases have been a pretense from the outset and should not be tolerated any further by this Court.

As demonstrated above, the Debtors' conduct fails on most, if not all measures of good faith and the future of these cases looks equally dim. There is no plan of reorganization and Debtors have not shown any business that could be reorganized or the ability to do so if there was such a business. The thirteen months of these cases has done little, if anything, but increase the secured debt encumbering the Debtors' assets. Accordingly, these cases should be dismissed for a

lack of good faith and the absence of a reasonable likelihood of reorganization.

WHEREFORE, Transcontinental requests the Court dismiss these jointly administered Chapter 11 cases and to award such other relief as the court deems proper.

Dated: August 19, 2009

Respectfully submitted,

ONSAGER, STAELIN & GUYERSON, LLC

By: /s/ Christian C. Onsager
Christian C. Onsager
1873 S. Bellaire St., Suite 1401
Denver, Colorado 80222
Ph: (303) 512-1123
Fax: (303) 512-1129
E-Mail: consager@osglaw.com

O'REILLY LAW GROUP, LLC

By: /s/ Timothy R. O'Reilly
John F. O'Reilly, Esq.
Nevada Bar No. 1761
Timothy R. O'Reilly, Esq.
Nevada Bar No. 8866
325 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 382-2500
Facsimile: (702) 384-6266
E-Mail: tor@oreillylawgroup.com

Counsel for Transcontinental Corporation
and Transcontinental Properties, Inc.