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In RE Banning Lewis Ranch Company, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13445 (KJC)  
*and*

In RE Banning Lewis Ranch Development I & II, LLC

United States Bankruptcy Court for the District of Delaware Chapter 11 Case No. 10-13446 (KJC)  
(Jointly administered).

United States District Court Case No. 15-cv-01442-REB

**CLAIM:** The Banning Lewis Ranch Co. LLC and Banning Lewis Ranch Development I & II LLC, filed Chapter 11 petitions in the U.S. Bankruptcy Court in Delaware, citing more than \$242 million in debts. The two companies own the 21,400-acre ranch that stretches from Woodmen Road to Fontaine Boulevard between Marksheffel and Meridian roads.

**STATUS:** Court approved sale of property to Ultra Resources; action moved to Colorado bankruptcy court to determine whether City land-use agreements including the BLR annexation agreement should remain in effect. On May 1, 2012, the City, Ultra and Debtor BLRC filed a joint motion to hold the adversary proceeding in abeyance until November 1, 2012, while the parties attempt to resolve the matter consensually. July 25, 2012 USBC District of Delaware Court orders the Debtor The Banning Lewis Ranch Company, LLC to sell the 72 acre parcel that was formerly the directors' parcel to Bahr Holdings LLC. Court grants the parties request to hold the Ultra Adversary Proceeding in abeyance until April 1, 2013 and requires the parties to file another status report not later than April 1, 2013. On April 1, 2013, the City and Ultra filed a Second Joint Status Report and Motion for Further Stay of Adversary Proceeding (the "Second Joint Motion"). In the Second Joint Motion, the City and Ultra requested a further stay of all proceedings until July 1, 2013. By order entered on April 3, 2013, the Court granted the Second Joint Motion, stayed the adversary proceeding until July 1, 2013, and directed the parties to file another status report no later than July 1, 2013. On June 28, 2013, the City and Ultra filed a Third Joint Status Report and Motion for Further Stay of Adversary Proceeding (the "Third Joint Motion"). In the Third Joint Motion, the City and Ultra requested a further stay of all proceedings until November 1, 2013. By order entered on July 1, 2013, the Court granted the Third Joint Motion, stayed the adversary proceeding until November 1, 2013, and directed the parties to file another status report no later than November 1, 2013. On November 1, 2013, the City and Ultra filed the Fourth Joint Status Report and Motion For Further Stay Of Adversary Proceeding (the "Fourth Joint Motion"). In the Fourth Joint Motion, the City and Ultra requested a further stay of all proceedings until January 14, 2014. By order entered on November 4, 2013, the Court granted the Fourth Joint Motion, stayed the adversary proceeding until January 14, 2014, and directed the parties to file another status report not later than January 14, 2014. On January 14, 2014, the City and Ultra filed the Fifth Joint Status Report and Motion For Further Stay Of Adversary Proceeding (the "Fifth Joint Motion"). In the Fifth Joint Motion, the City and Ultra requested a further stay of all proceedings until March 17, 2014. By order entered on January 28, 2014, the Court granted the Fifth Joint Motion, stayed the adversary proceeding until March 17, 2014, and directed the parties to file another status report not later than March 17, 2014. On March 17, 2014, the City filed a Status Report with the Court advising the Court that the parties were unable to reach a consensual resolution and had decided to move forward in the Adversary Proceeding. On March 17, 2014, Ultra and the Debtor filed a Motion to Terminate the Stay of the Adversary Proceeding and Request for a Scheduling Conference. On March 19, 2014, the City filed its Response to the Motion to Terminate the Stay. On March 21, 2014, the Court entered its order terminating the stay of the

Adversary Proceedings and (a) directed the parties to file responses to the Motion to Intervene filed by Randle W. Case on or before April 1, 2014; (b) directed Ultra and the Debtor to reply to the City's amended counterclaims by April 17, 2014; (c) directed the parties to conduct a Rule 26(f) conference and submit an amended Rule 26(f) report by April 23, 2014; and (d) scheduled a status and scheduling conference for April 30, 2014. On April 1, 2014, Ultra and the Debtor filed their Response to the Motion to Intervene and stated their opposition to the Motion to Intervene. On April 1, 2014, the City filed its Response to the Motion to Intervene and stated its support for the Motion to Intervene. On April 3, 2014, Ultra and the Debtor filed their Motion for Partial Summary Judgment and argued that the Court should enter a declaratory judgment that the Annexation Agreement is an executory contract that can be rejected. On April 10, 2014, Mr. Case filed his Reply in Support of Motion to Intervene. On April 17, 2014, Ultra and the Debtor filed their Reply to the City's Amended Counterclaims. On April 23, 2014, the parties filed the Amended Rule 26(f) Report. On April 30, 2014, the parties appeared for the status and scheduling conference. During the conference, the Court set a deadline of May 30, 2014, for the City to file its own motion for partial summary judgment and a motion to join necessary parties. The Court also stated that discovery would not go forward until the Court had ruled on the motions for partial summary judgment. On May 5, 2014, Mr. Case filed his Response to Ultra's and the Debtor's Motion for Partial Summary Judgment. On May 5, 2014, the City filed its Response to Ultra's and the Debtor's Motion for Partial Summary Judgment. On May 30, 2014, the City filed the City's Motion to Require Joinder of Absent Annexors in Banning Lewis Ranch (the "Joinder Motion") and the City's Motion for Partial Summary Judgment (the "Summary Judgment Motion"). In the Joinder Motion, the City argued in substance that all of the annexors within Banning Lewis Ranch should be joined as parties to the litigation because Ultra seeks to adversely affect their interests. In the Summary Judgment Motion, the City argued in substance that the Court should grant summary judgment in favor of the City and declare that (a) the Annexation Agreement is not an executory contract that can be rejected pursuant to Section 365 of the Bankruptcy Code and (b) the property Ultra acquired from the Debtor remains subject to the Annexation Agreement because the sale of the property to Ultra was not free and clear of the Annexation Agreement pursuant to Section 363(f) of the Bankruptcy Code. On June 2, 2014, Ultra filed its reply brief in support of its motion for partial summary judgment and in reply to the responses filed by the City and Mr. Case to Ultra's motion for partial summary judgment. On June 10, 2014, Nor'wood Development Group issued a press release stating that Ultra had contracted to sell the property to Nor'wood subject to completion of due diligence. On July 7, 2014, Ultra filed its response to the City's Joinder Motion and Summary Judgment Motion. On July 30, 2014, the City filed its reply briefs in further support of the City's Joinder Motion and Summary Judgment Motion and in reply to Ultra's responses in opposition to those motions. On July 31, 2014, the Court set a telephonic status conference to be held on October 1, 2014, at 10:00 am. On August 26, 2014, the Court entered an order allowing Ultra to file sur-reply briefs in response to the City's reply brief in support of its motion for summary judgment and in support of its motion to join the other annexors as necessary parties. On December 10, 2014, Ultra and the Nor'wood entities that purchased the property within Banning Lewis Ranch owned by Ultra -- BLH No.1, LLC, BLH No. 2, LLC, and Banning Lewis Holdings, LLC (collectively, the "BLH Entities") filed a motion to substitute the BLH Entities for Ultra and stated that Ultra had assigned all of its claims, rights and interests in the adversary proceeding to the BLH Entities. On December 12, 2014, the Court granted the motion to substitute. On December 12, 2014, the Court also heard oral argument on the pending motions for summary judgment and took the matter under advisement. Court's

ruling on motions is pending. On June 22, 2015, the bankruptcy court entered its Order on Pending Motions and granted summary judgment in favor of the City and denied the partial summary judgment motion filed by the BLH Entities. The bankruptcy court held that the Annexation Agreement and related agreements are not executory contracts that can be rejected and that the sale of the property was not free and clear of the Annexation Agreement and related agreements. On July 6, 2015, the BLH Entities filed their Notice of Appeal and Statement of Election (electing to have the appeal heard by the United States District Court for the District of Colorado). On July 20, 2015, the BLH Entities filed their Designation of Record and Statement of Issues. On August 3, 2015, the City filed Appellees' Designation of Additional Items to Be Included in the Record On appeal. On August 3, 2015, the parties filed the Joint Motion to Abate Appeal Pending Settlement Negotiations and requested that the appeal be held in abeyance until October 2, 2015. On August 4, 2015, the federal district court entered the Order Granting Joint Motion to Abate Appeal During Settlement Negotiations and stayed the appeal until October 2, 2015 and directed the parties to file by October 2, 2015, a joint status report apprising the court of the status of the negotiations and their view as to how the case should proceed. On September 30, 2015, the parties to the appeal filed a Status Report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations (the "Joint Motion"). In the Joint Motion, the parties informed the Court that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until December 1, 2015. By order entered on October 20, 2015, the Court granted the Joint Motion and continued to hold the appeal in abeyance until December 1, 2015 and closed the case administratively subject to reopening for good cause. On November 23, 2015, the parties filed a Second Status Report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations and stated that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until February 15, 2016 (the "Second Joint Motion"). By order entered on November 24, 2015, the Court granted the Second Joint Motion and continued to hold the appeal in abeyance until February 15, 2016, and directed the parties to file another status report on or before February 15, 2016. On February 15, 2016 the parties filed a third status report and Joint Motion to Extend Abatement of Appeal Pending Settlement Negotiations and stated that settlement negotiations were continuing and requested that the Court continue to hold the appeal in abeyance until May 2, 2016 which the Court has not yet ruled on. On May 2, 2016, the parties filed a Fourth Status Report and Joint Motion to Re-Open Case for Limited Purpose, Extend Abatement of Appeal Pending Settlement Negotiations, and Close Case Subject to Reopening for Good Cause, stated that settlement negotiations were continuing, and requested that the Court continue to hold the appeal in abeyance until August 1, 2016. The Court has not yet ruled on that request. On August 1, 2016, the parties filed a Status Report and Joint Motion to Reopen Case for Limited Purpose, Extend Abatement of Appeal Pending Settlement Negotiations, and Close Case Subject to Reopening for Good Cause, and requested, among other things, that the district court continue to hold the appeal in abeyance until November 1, 2016. On August 2, 2016, the district court entered its Order Granting Joint Motion to Abate Appeal Pending Settlement Negotiations, and ordered that the action remain stayed and all deadlines be held in abeyance until November 1, 2016, and directed the parties to file a joint status report by November 1, 2016. Joint status report and joint motion to continue filed on November 1, 2016 and granted by the Court holding case in abeyance until February 1, 2017. On January 26, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until July 1, 2017, while the parties continue settlement

negotiations. On June 27, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until October 2, 2017, while the parties continue settlement negotiations. **On September 8, 2017, the district court entered an Order granting the motions and continued to hold the appeal in abeyance until November 3, 2017 and directed the parties to file a status report on or before November 3, 2017. On November 2, 2017, the parties filed the Joint Status Report and Joint Motion to Continue Abatement of Appeal Pending Settlement Negotiations, and requested the district court to continue to hold the appeal in abeyance until February 2, 2018, while the parties continue settlement negotiations. On November 3, 2017, the district court entered an Order granting the motion and continued to hold the appeal in abeyance until February 2, 2018 and directed the parties to file a status report on or before February 2, 2018.**

(Massey – Florczak City Attorney’s Office / William Hazeltine, Sullivan, Hazeltine, Allison, LLC (Delaware) and Peter Cal at Sherman and Howard (Denver))