IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	) Chapter 11
	)
WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1]	) Case No. 17-12560-(KJC)
	)
	) Jointly Administered
	)
	) **(Proposed) Hearing date: 6/5/8 at 11:00 a.m. (ET)**
Debtors.	) **(Proposed) Obj. Deadline: 5/29/18 at 4:00 p.m. (ET)**
	)
	) **Re Docket No. 828 & 840**

MOTION OF LISE LA ROCHELLE, *ET AL*. NOTEHOLDERS
TO TERMINATE EXCLUSIVITY

Lise La Rochelle, *et al*. Noteholders (together the "Secured Noteholders") through undersigned counsel, in support of their motion to terminate exclusivity (the "Motion") state as follows:

1. The Debtors, the Unsecured Creditors Committee, the Ad Hoc Noteholders Committee, and the Ad Hoc Unitholders Committee all cut a deal with respect to a plan of reorganization memorialized in a summary plan term sheet (the "Term Sheet") filed on March 27, 2018 (Docket No. 828). Under the Term Sheet, the parties agreed to a formula for paying noteholders and unitholders as the Debtors' estates are liquidated. However, they failed to deal with one major issue, which in this case is the $800 million question, whether or not noteholders hold secured, perfected liens. At the February 13th hearing, the Court indicated that an adversary proceeding would be necessary to resolve the issue of whether noteholders were perfected. As it

[1]The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks California 91423. The complete list of Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the noticing and claims agent at www.gardencitygroup.com/cases/wgc.

became clear that none of the retained professionals were going to bring this issue to the Court for determination, Lise La Rochelle, an 85-year-old retired attorney, and others, filed an adversary proceeding (the "Owlwood Complaint") on March 27, 2018 (Docket no. 840). Presently, the Plaintiffs are working on a scheduling order. No plan of reorganization can be confirmed until this issue is resolved. Because it will be months before this issue is finally resolved, exclusivity should be terminated and other creditors should be allowed to file alternative plans of reorganization.

THE LA ROCHELLE ADVERSARY PROCEEDING MUST BE DECIDED BEFORE A PLAN CAN BE PUT FORTH

2. Contrary to the operating assumption of the Debtors and Creditors' Committee that noteholders are unsecured because they neither hold the original promissory notes on their collateral nor have UCC-1 financing statements filed, there is a California statute that specifically protects noteholders in this case. The statute was specifically drafted to protect consumer noteholders who purchase notes in the exact type of situation that is presented in this case. 90% of the real properties upon which noteholders hold perfected security interests are located in California, and the Debtors' main offices are in Sherman Oaks, California. This Court must not let the Debtors *et al.* do an "end run" on the protections afforded by the California consumer statute. The Owlwood Complaint sets out the elements of the statute. Section 10233.2 of the California Business and Professional Code as interpreted by the 9th Circuit Court of Appeals in *In Re: First T.D. Investment, Inc.*, 253 F.3d 520 (9th Cir. 2001) ("In Re FTD"), a case with a similar fact pattern to this one, establishes the perfection of the security interests. A copy of the opinion, as well as California Business and Professional Code Secs. 10131.1, 10233 and 10233.2, are attached hereto as Exhibit A.

3. Section 10233.2 is a consumer protection statute specifically enacted by the California legislature for the exact set of circumstances presented to the Secured Noteholders. The statute lists requirements that establish perfection absent holding the underlying note or a filed UCC-1.

4. First, the borrower needs to be acting as a broker within the meaning of Section 10131 or 10131.1 of the California Business and Professional Code. Under 10131.1 the term real estate broker is defined as "a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property." There is no question that Woodbridge was engaged in this kind of activity.

5. Second, the real estate broker has to have "...arranged a loan or sold a promissory note or any interest therein, and thereafter undertakes to service the promissory note on behalf of the lender or purchaser in accordance with Section 10233…" The Ninth Circuit in In Re FTD used a very broad definition of sold writing "...we read §10233.2 to incorporate the definition of "sale" in §10131.1 to apply to both 'broker' and 'sold' in §10233.2." In Re FTD, *supra*, at 529. The definition of "sale" from 10131.1 "include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property." There is no question that the Woodbridge Group was a licensed broker that arranged and serviced these loans.

6. Third, the real estate broker undertakes to service the promissory note on behalf of the lender. Woodbridge was servicing the note between the investment fund and the property company within the meaning of Section 10233 as required. 10233 lists various requirements with which the servicer shall comply. The Secured Noteholders received direct communications and checks from the Woodbridge Group. There was no way for any one Secured Noteholder to monitor the underlying promissory note. Additionally, the Secured Noteholders received monthly interest payments and statements from the Debtors.

7. Perfection under 10233.2 is deemed complete, even if the broker holds the underlying promissory note, "...provided that the deed of trust or an assignment of the deed of trust or collateral documents in favor of the lender or purchaser is recorded in the office of the county recorder in the county in which the security property is located, and the note is made payable to the lender or is endorsed or assigned to the purchaser." An unknown number of the noteholders including the Secured Noteholders have properly recorded collateral assignments. Additionally, the Deed of Trust for the Owlwood property is properly recorded. The Secured Noteholders have perfected security interests in Owlwood, and the issue of perfection must be determined before any plan of reorganization is heard.

THE EXCLUSIVE PERIODS SHOULD BE TERMINATED

8. At the May 1, 2018 hearing before this this Court, it was indicated that the Debtors and the various committees anticipate incorporating the terms of the Term Sheet into a Disclosure Statement and Plan of Reorganization. The basic terms provide for a liquidation of properties over time and subsequent progress payments to Noteholders and Unitholders.

9. Prior to May 1, by Motion for Entry of an Order, Pursuant to Section 1121(d) of the Bankruptcy Code, Extending the Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof, dated March 15, 2018 (Docket no. 754)("Motion to Extend

Exclusivity"), the Debtors filed a motion to extend their exclusive right to file a plan and solicit acceptances until July 2, 2018 and September 4, 2018 respectively. On April 3, 2018, this Court signed the requested order, and the Clerk duly entered the order extending exclusivity.

10. By this Motion, the Secured Noteholders seek to terminate the Debtors' exclusive period and be provided the right to file a competing plan of reorganization. Given that the existing Debtors are not protecting the rights of original equity holder, Robert Shapiro, and that the Debtors are run by professional bankruptcy fiduciaries who are equivalent to a Chapter 11 Trustee, there is no reason for the Debtors to maintain exclusivity. Section 1121(c) of the Bankruptcy Code is clear that a chapter 11 trustee does not have the exclusive right to file a plan of reorganization. As a result of that certain Order dated January 23, 2018 (Docket No. 357), wherein management and the Board of the Debtors resigned, this case is analogous to one in which a trustee is managing the Debtors. For this reason, there is no purpose for providing the Debtors with exclusivity.

11. By terminating exclusivity, the Secured Noteholders will be able to explore a plan of reorganization which may accomplish the following objectives: 1) resolves the issues of priority and seniority of perfected liens; 2) allow for a lump-sum payout to creditors; and 3) encourages third party investors to develop the Debtors existing properties and thereby increase the recovery to creditors.

12. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to file a chapter 11 plan (the "Exclusive Filing Period"). Section 1121(c)(3) of the Bankruptcy Code provides that if a debtor files a plan within the 120-day Exclusive Filing Period, it has an exclusive period of 180 days from the petition date to obtain acceptances of its plan (the

"Exclusive Solicitation Period"). A debtors' exclusivity is not absolute. Rather, section 1121(d)(1) of the Bankruptcy Code provides that the Court "may for cause reduce or increase the 120-day period or the 180-day period." 11 U.S.C. §

13. However, Section 1121(c) provides: (c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

(1) a trustee has been appointed under this chapter;

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order of relief under this chapter, by each class of claims or interests that is impaired under the plan.

14. As stated above, management has been replaced and this case is akin to one where there is a trustee operating the Debtors. Therefore, any creditor, including the Secured Noteholders should be permitted to file a plan. Furthermore, because the Ad Hoc Committee of Noteholders does not speak for all noteholders, and has not taken a position to enforce the perfection of the California noteholders' liens, this Court should allow the Secured Noteholders to explore filing their own plan. It is clear that certain California properties such as Owlwood hold the greatest value in this case and may provide a basis for significant recovery. To deny California noteholders the right to realize on their specific collateral, which they relied on at the outset when making the investment decision, would be a miscarriage of justice.

15. Additionally, although "Cause" to terminate exclusivity is not defined in the Bankruptcy Code, and the determination of whether cause exists lies in the Court's discretion,

Section 1121(d)(1) "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of "cause.'" *Geriatrics Nursing Home, Inc. v. First Fid. Bank, N.A.* (*In re Geriatrics Nursing Home, Inc.*), 187 B.R. 128, 132 (D. N.J. 1995).

16. Courts have identified a number of factors to consider in assessing whether to terminate a debtor's exclusive periods. Such factors include: (i) the existence of good faith progress; (ii) whether the debtor has made progress negotiating with creditors; (iii) whether the debtor is seeking the extension to pressure creditors; (iv) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (v) the length of time the case has been pending; (vi) whether the debtor is paying its debts as they come due; (vii) the size and complexity of the case; (viii) the necessity of sufficient time to negotiate and prepare adequate information; and (ix) whether unresolved contingencies exist. *See In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 184 (Bankr. D. N.J. 2002) (citing factors in evaluating whether to grant a motion to extend exclusive periods); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (citing such factors in determining whether to grant a motion to terminate exclusivity); *In re Adelphia Commcn's Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

17. Many of the aforementioned factors do not apply in this case because the Debtors are liquidating properties; however, the single most important and relevant factor, whether or not noteholders are perfected, is an unresolved contingency.

18. Section 1121 was not enacted as a means to hamper alternative reorganization proposals. As the United States Court of Appeals for the Third Circuit explained:

> The ability of a creditor to compare the debtor's proposals against other possibilities is a powerful tool by which to judge the reasonableness of the proposals. A broad exclusivity provision, holding that only the debtor's plan may be 'on the table,' takes this tool from creditors. Other creditors will not have comparisons with which to judge the proposals of the debtor's plan, to the benefit of the debtor proposing a reorganization plan. The history of § 1121 gives no indication that Congress intended to benefit the debtor in this way.
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> *Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94, 102 (3d Cir. 1988); *see also In re Sharon Steel Corp.*, 78 B.R. 762, 766 (Bankr. W.D. Pa. 1987) (denying debtors' request to extend exclusivity period and stating: "The leverage accorded to the debtor by the period of exclusivity must give way to the legitimate interests of other parties in interest so that progress toward an effective reorganization of the debtor may be enhanced before it is too late. The proceeding must be opened up to substantial and significant input by the creditors in the event they can propose a means (possibly by proposal of a plan of reorganization) which will rescue the debtor from its precarious posture.").

The Debtors Cannot Demonstrate Cause to Maintain the Exclusive Periods

19. The Debtors cannot meet their burden of establishing that cause exists to maintain the Exclusive Periods because (i) as previously mentioned, this case is a liquidation not a reorganization; (ii) the Debtors have not demonstrated to the Court that the Secured Noteholders are unsecured, and (iii) the Plan is not confirmable.

20. Here, the secured Noteholders have no final determination of their rights. The Debtors, Unsecured Creditors' Committee, Ad Hoc Noteholders Committee and Unitholders Committee rather than litigating this critical issue cut a deal. If these parties are wrong about the status of Noteholders, they are giving away recoveries to Unitholders for no reason.

21. The Debtors' Amended Plan is unconfirmable as a matter of law for a number of reasons. Most notably, the Plan violates sections 1129(a)(7)(A)(ii) and 1129(b) of the Bankruptcy Code.

22. Courts have permitted the filing of a competing plan to be considered on the same confirmation track as the Debtors' plan. For example, in *Mother Hubbard*, the court ruled that it was in the "best interests of all parties" to consider the debtor's plan and an alternate plan on the

same confirmation track to enable creditors and interest holders to "review and analyze both plans (on an equal footing) and decide which plan best satisfies their interests. This result comports with the Code, is not prejudicial to the Debtor, and promotes collective decision-making in a creditor democracy." 152 B.R. at 196.

23. By allowing the Secured Noteholders and other parties the opportunity to propose a plan, the Debtors will suffer no prejudice because they will retain their ability to prosecute their Plan. *See, e.g., In re S.W. Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 454 (Bankr. W.D. Tex. 1987) ("By denying the extension, the Court does not prejudice the debtors' co-existent right, nor dilute the debtors' duty to file a plan. The other parties are simply allowed to protect their interests by coming forward with alternative plans. . ."). Nor will the Debtors' estates incur significant incremental expense because streamlined procedures may be established for the concurrent solicitation of both the Debtors' Plan and alternative plans.

24. The Secured Noteholders need a viable alternative to the Debtors' Plan. There is no need to first incur the expense and delay associated with a protracted confirmation process for an unconfirmable plan. The Secured Noteholders are prepared to put forth an alternative plan subsequent to the determination of the outstanding adversary proceedings. This is the most efficient way to move the Chapter 11 cases forward.

WHEREFORE, the Secured Noteholders respectfully request that this Court enter an order substantially in the form attached hereto as **Exhibit B**, and grant such other and further relief as is just and proper.

Dated: May 18, 2018
Wilmington, Delaware

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EXHIBIT A

In Re: First T.d. & Investment, Inc.; Joint Development, Inc., Debtors.r. Todd Neilson, Chapter 7 Trustee, Plaintiff-appellee, v. Angela Shiu Rong Chang; Angela Shiu Rong Chang, F/b/o the Angela Chang Family Trust; Cynthia L. Lien; Galaxy Industrial Corporation; Anna P. Jen Kin; Wen F. Kuo; Tsu C. Kuo; Sze Ming Ma; Cheng H. Ma; Irene Werner; Haitang Li; Ru Lin Wu; Hong Yang; Xiao Ping Sun; Steve Po-an Mu; Yang Ying Chang Mu; Rita Chwen-yi Tsai; Pei Ti Wan, Defendants-appellants.r. Todd Neilson, Chapter 7 Trustee, Plaintiff-appellee, v. Angela Shiu Rong Chang; Cynthia L. Lien; Galaxy Industrial Corporation; Anna P. Jen Kin; Wen F. Kuo; Tsu C. Kuo; Sze Ming Ma; Cheng H. Ma; Irene Werner; Haitang Li; Ru Lin Wu; Hong Yang; Xiao Ping Sun; Steve Po-an Mu; Yang Ying Chang Mu; Rita Chwen-yi Tsai; Pei Ti Wan; Ming Yeng Wang; Ping Yuan Liu; Ching I Liu; Catherine Chang; Peter L. Chang; Julie Shih; Simon Shih; Julijanti Lucie Moeis; Lin Chu Tsai; Hsiu Chuan Wang Chen; Chang a Lan Huang; Hsiu Ying Kuo; Hsien Huei Lin; Tsai Chu Lin; Chien Yueh O Lien; Accurate Escrow, Inc.; Angela Shiu Rong Chang, F/b/o the Angela Chang Family Trust, Defendants-appellants, 253 F.3d 520 (9th Cir. 2001)

US Court of Appeals for the Ninth Circuit - 253 F.3d 520 (9th Cir. 2001)

Argued and Submitted November 14, 2000Filed June 19, 2001

[Copyrighted Material Omitted]

Gregory M. Salvato, Parker, Milliken, Clark, O'Hara & Samuelian, Los Angeles, California, for defendants-appellants Chang et al.

Michael H. Weiss, Weiss Scolney Spees, Llp, Los Angeles, California, for plaintiff-appellee R. Todd Neilson.

Appeal from the United States District Court for the Central District of California Dean D. Pregerson, District Judge, Presiding, D.C. No. CV 98-3004 DDP; Bankr. Adv. No. AD 96-03493 TD; D.C. No. CV 98-8161 DDP; Bankr. Adv. No. AD 96-03493 TD

Before: William C. Canby, Jr., M. Margaret McKeown, and Richard A. Paez, Circuit Judges.

Paez, Circuit Judge

These two consolidated appeals concern a real estate mortgage investment scheme perpetrated by Debtors, First T.D. & Investment, Inc. ("FTD") and Joint Development, Inc. ("JDI").[1] The trustee of their consolidated Chapter 7 bankruptcy estates, Appellee R. Todd Neilson ("the Trustee"), filed an adversary action against Defendants, 132 investors in FTD,[2] alleging that collateral notes and trust deeds ("security instruments") assigned by FTD to Defendants as security for their investments did not perfect their interests because Defendants did not have possession of the security instruments.

Twenty years ago, in a case with facts very similar to those here, we held that such security interests could not be perfected under California law without actual possession of the security instruments. See Greiner v. Wilke (In re Staff Mortgage & Inv. Corp.), 625 F.2d 281, 283 (9th Cir. 1980) ("Staff Mortgage") (citing Cal. Comm. Code § 9304(1)). More than a decade later, the California Legislature created an exception to this rule by enacting California Business and Professions Code § 10233.2, which, under limited circumstances, permits perfection without possession of the security instruments.

At issue here is whether the exception created by§ 10233.2 applies to the transactions between Defendants and FTD, such that Defendants' security interests are deemed perfected. The bankruptcy court found that § 10233.2 applies and granted summary judgment in favor of those Defendants who filed an answer in the adversary proceeding ("Answering Defendants"). The district court reversed. We have jurisdiction pursuant to 28 U.S.C. § 158(d). We hold that§

10233.2 applies to Defendants' security interests, and therefore the Trustee's attempt to avoid Defendants' priority status must fail. We also reject the Trustee's argument that we should impose a constructive trust to circumvent § 10233.2. Accordingly, we reverse in Case No. 99-55851 ("Chang Appeal").

In a related appeal, Case No. 99-55840 ("Appeal from Default Judgments"), Defendants who defaulted in the adversary proceeding ("Defaulting Defendants") challenge the bankruptcy court's entry of final default judgments under Federal Rule of Civil Procedure 54(b). Defaulting Defendants argue that the final default judgments were inconsistent with the bankruptcy court's earlier summary judgment ruling that Answering Defendants' security interests were deemed perfected under § 10233.2. Because we hold that§ 10233.2 applies to the investor transactions at issue here, we conclude that the bankruptcy court abused its discretion and reverse the judgment of the district court with instructions to reverse the entry of final default judgments.

Prior to its involuntary bankruptcy, FTD was in the business of investing in real estate mortgages. It initiated and purchased home loans evidenced by collateral notes and secured by trust deeds on real property owned by the borrowers ("borrowers").

FTD financed its investment scheme with approximately $35 million borrowed from hundreds of individual investors, typically Chinese-American immigrants in Southern California ("investors"). FTD secured its loans from investors by assigning to them the collateral notes and trust deeds ("security instruments") from its home loan portfolio. FTD recorded the assignments with the county recorder where the property was located, but FTD maintained possession at all times of the collateral notes and trust deeds.[3]

Additionally, FTD entered into a "Servicing Agreement" with each investor that authorized FTD, as a "real estate broker" acting as a "servicing agent," to collect all loan payments from borrowers and to take other actions necessary or convenient to servicing of the note. While many investors at the time mistakenly believed they had actually purchased the trust deeds, Defendants accept, for purposes of this appeal, that they were merely assigned the trust deeds in a security transaction.[4]

FTD, in violation of California law, commingled funds received from investors and borrowers, using funds from any source for any and all purposes to continue its operations. FTD frequently used payments from one investor to pay interest and other payments to another investor -- a classic Ponzi scheme.

The investment scheme ultimately unraveled. Petitions for involuntary bankruptcy against FTD and JDI were filed under Chapter 11 of the U.S. Bankruptcy Code on October 21, 1994, and November 2, 1994, respectively. The cases were subsequently consolidated and converted to Chapter 7 proceedings in April 1995. Appellee R. Todd Neilson was appointed as trustee to manage the consolidated bankruptcy estates.

Seeking to treat all creditors on an equal basis for asset distribution, the Trustee filed an adversary action in bankruptcy court against 132 of the investors who held recorded assignments of specific trust deeds ("Defendants"). The Trustee alleged that Defendants' security interests were unperfected under California law because Defendants never obtained possession of the original collateral notes or trust deeds. Under 11 U.S.C. § 544(a), unperfected security interests are avoidable and can be relegated to the status of general unsecured claims. In this way, the

Trustee sought to prevent Defendants from receiving priority in the distribution of FTD and JDI's assets.

On cross-motions for summary judgment with respect to 18 of the Answering Defendants, the bankruptcy court entered summary judgment on January 23, 1998, in their favor and against the Trustee. The bankruptcy court held that the transactions between FTD and Answering Defendants fell within the scope of § 10233.2 and thus, although they lacked actual possession of the security instruments, Answering Defendants' interests were deemed perfected. Chang, 218 B.R. at 94-95.

Because the issue of perfection under § 10233.2 was of such importance to the entire adversary proceeding, the bankruptcy court entered a final judgment pursuant to Federal Rule of Civil Procedure 54(b). The Trustee appealed to the district court. The district court reversed, holding that the transactions at issue were not within the scope of § 10233.2.

B. Appeal of Default Judgments (No. 99-55840)

On April 30, 1997, prior to entry of summary judgment for Answering Defendants, the Trustee moved for entry of default and default judgment against the 88 Defaulting Defendants who had not answered the complaint in the above adversary proceeding.[5] The bankruptcy court granted the Trustee's motion, but the interlocutory order was not appealable.

In May 1998, four months after the bankruptcy court entered summary judgment for Answering Defendants, the Trustee moved to certify the default judgments as final under Federal Rule of Civil Procedure 54(b). Defaulting Defendants objected to entry of final judgments because the judgments were inconsistent with the bankruptcy court's earlier summary judgment ruling, holding that the security interests of Answering Defendants were perfected under § 10233.2. Chang, 218 B.R. at 95. In granting the Trustee's motion to certify, the bankruptcy court stated in the final default judgments that: "The Defaulting Defendants failed to perfect their security interest in the Collateral Notes and Deeds of Trust by failing to obtain possession of same."[6] Notwithstanding Defaulting Defendants' objections to the inconsistent rulings, the bankruptcy court entered the final judgments on June 1, 1998.

Defaulting Defendants appealed the entry of the final default judgments to the district court, which affirmed, citing its contemporaneous ruling reversing the bankruptcy court on the applicability of § 10233.2 to Answering Defendants.

Defendants contend that § 10233.2 applies to their loan transactions with FTD, and under the provisions of that statute, their security interests are deemed perfected. They seek reversal of the district court's decision to the contrary.

We review de novo a district court's judgment on appeal from a bankruptcy court. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1084 n.9 (9th Cir. 2000) (en banc). We apply the same standard of review applied by the district court, reviewing the bankruptcy court's legal conclusions de novo and its factual determinations for clear error. Beaupied v. Chang (In re Chang), 163 F.3d 1138, 1140 (9th Cir. 1998), cert. denied, 526 U.S. 1149 (1999).

Relying on the text of the statute and established rules of statutory construction under California law, we conclude that § 10233.2 applies to the loan transactions in question, and accordingly, that Defendants' security interests are deemed perfected. The statute's legislative history provides further support for our conclusion.

Section 544 of the Bankruptcy Code, the "strong-arm clause," grants a trustee in bankruptcy "the rights and powers of a hypothetical creditor who obtained a judicial lien on all of the property in the estate at the date the petition in bankruptcy was filed." In re Commercial W. Fin. Corp., 761 F.2d 1329, 1331 n.2 (9th Cir. 1985) (citing 11 U.S.C.§ 544(a) (1)). "One of these powers is the ability to take priority over or `avoid' security interests that are unperfected under applicable state law . . . ." Id. Avoiding such interests relegates them to the status of a general unsecured claim. See 5 Collier on Bankruptcy ¶¶ 544.02, 544.05 (Lawrence P. King ed., 15th ed. rev. 2000).

The general rule in California requires the secured party to take possession of the security instrument in order to perfect the security interest. Cal. Com. Code § 9304(1). Section 10233.2, enacted in 1992 through California Senate Bill 1520, creates an exception to the normal rule requiring possession in certain types of transactions involving real estate brokers. 1992 Cal. Legis. Serv. Ch. 158 (West). Section 10233.2 deems a security interest perfected, without possession of the security instruments, provided five requirements are met: (1) a "broker, acting within the meaning of" California Business and Professions Code §§ 10131 or 10131.1 possesses the security instrument; (2) the broker has "arranged a loan" or "sold a promissory note or any interest therein"; (3) the broker "undertakes to service the promissory note"; (4) the trust deed or collateral documents in favor of the lender are"recorded in the office of the county recorder in the county in which the security property is located"; and (5) "the note is made payable to the lender or is endorsed or assigned to the purchaser."[7]

The Trustee does not dispute that the transactions between FTD and Defendants satisfy requirements one, three, four, and five. The Trustee concedes that FTD is a real estate broker within the meaning of §§ 10131 and 10131.1. The only dispute concerns whether FTD "arranged a loan " or "sold a promissory note or any interest therein" in its transactions with investors.

With the exception of the bankruptcy and district courts below, no state or federal court has had occasion to interpret § 10233.2. We therefore apply California's rules of statutory construction. See Fed. Sav. & Loan Ins. Corp. v. Butler, 904 F.2d 505, 510 (9th Cir. 1990) (construing Cal. Civil Code § 877). California Code of Civil Procedure§ 1859 provides that " [i]n the construction of a statute the intention of the Legislature . . . is to be pursued, if possible." The California Supreme Court has declared that the "ultimate task" in statutory interpretation "is to ascertain the legislature's intent." People v. Massie, 19 Cal. 4th 550, 569, 967 P.2d 29, 41 (1998), cert. denied, 526 U.S. 1113 (1999)."Ordinarily, the words of the statute provide the most reliable indication of legislative intent." Pacific Gas & Elec. Co. v. County of Stanislaus, 16 Cal. 4th 1143, 1152, 947 P.2d 291, 297 (1997). Courts should give the language of the statute "its usual, ordinary import and accord [ ] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." Dyna-Med, Inc. v. Fair Employment & Hous. Comm'n, 43 Cal. 3d 1379, 1386-87, 743 P.2d 1323, 1326 (1987). When the wording of the statute is ambiguous, however, a court may consider extrinsic evidence of the legislature's intent, "including the statutory scheme of which the provision is a part, the history and background of the statute, the apparent purpose, and any considerations of constitutionality." Hughes v. Bd. of Architectural Exam'rs, 17 Cal. 4th 763, 776, 952 P.2d 641, 649 (1998).

The critical issue for our purposes in interpreting§ 10233.2 concerns the application of § 10131.1 to this statute, and specifically, its application to the word "sold" as used in "sold a promissory note or any interest therein" in § 10233.2. Section 10131.1 provides, in relevant part:

A real estate broker within the meaning of this part is also a person who engages as a principal in the business of buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

As used in this section, "sale," "resale," and "exchange" include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property, except the original issuance of a promissory note by a borrower or a real property sales contract by a vendor, either of which is to be secured directly by a lien on real property owned by the borrower or vendor.

We agree with the Trustee that the generally accepted definition of "sale" does not include the assignment of a security interest. See Milana v. Credit Disc. Co., 27 Cal. 2d 335, 339-40, 163 P.2d 869, 871 (1945); Golden State Lanes v. Fox, 232 Cal. App. 2d 135, 138, 42 Cal. Rptr. 568, 570 (1965); Black's Law Dictionary 1337 (6th ed. 1990) ("a `sale' is distinguished from a mortgage, in that the former is a transfer of the absolute property in the goods for a price, whereas a mortgage is at most a conditional sale of property as security for the payment of a debt or performance of some other obligation, subject to the condition that on performance title shall revest in the mortgagor").

Nonetheless, § 10131.1 provides an expansive definition of "sale," which "include [s] every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property" (emphasis added). We previously have held that this definition of "sale" includes the assignment of security interests by a real estate broker to investors. See Lucas v. Thomas (In re Thomas), 765 F.2d 926, 931 (9th Cir. 1985) (transaction by which investors in sole proprietorship delivered money to owner of proprietorship, a licensed real estate broker, in exchange for which broker issued promissory notes secured by deeds of trust on two condominiums that broker owned is a "sale" within meaning of § 10131.1).

The outcome of this case turns on which definition of "sale" or "sold" the California Legislature intended to adopt when it included the phrase "sold a promissory note or any interest therein" in § 10233.2.[8] If it intended to adopt the conventional definition of "sold" (and thus limit the application of § 10131.1 exclusively to the term "broker" in § 10233.2), then § 10233.2 would not apply to FTD's assignment of security interests to Defendants. Consequently, Defendants' interests would be unperfected under California law, and the Trustee could avoid them under 11 U.S.C. § 544. If, however, the legislature intended to adopt the more expansive definition of "sale" from § 10131.1, then § 10233.2 would apply to the assignment of security interests, rendering Defendants' interests perfected and therefore not avoidable by the Trustee.

The text of § 10233.2 suggests that it adopts the definitions of both "broker" and "sold" provided by§ 10131.1. Section 10233.2 states, in relevant part: "when a broker, acting within the meaning of subdivision (d) or (e) of Section 10131 or Section 10131.1, has arranged a loan or sold a promissory note or any interest therein." Although placement of the clause immediately after "broker" might normally indicate that the clause modifies only this term, use of the words"acting within" suggests that §§ 10131 and 10131.1 apply not only to define broker but also to define the type of broker transactions -- i.e., "arranged a loan" or "sold a promissory note or any interest therein" -- covered by § 10233.2.

We see no reason why the California Legislature would incorporate two different definitions of "sold " into § 10233.2: a broad one to define broker and a narrow one to define the type of broker transactions covered under the statute. " [I]t is generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." People v. Dillon, 34 Cal. 3d 441, 467, 668 P.2d 697, 712 (1983). It follows that the legislature intended to use a single definition of "sale" throughout § 10233.2, as applied to both the term "broker" and the term "sold."

We find unconvincing the Trustee's argument that the restrictive language of § 10131.1 ("As used in this section . . .") limits the expansive definition of sale to "broker." Such restrictive language cannot bar a newer statute, such as § 10233.2, from incorporating through reference the definition in an older statute. See Collection Bureau v. Rumsey, 24 Cal. 4th 301, 310, 6 P.3d 713, 719 (2000) ("If conflicting statutes cannot be reconciled, later enactments supersede earlier ones . . . .") Here, the California Legislature's use of the phrase "acting within the meaning of [§§ 10131 or 10131.1]" evidences its intent to use the same definition throughout § 10233.2.

We also reject the Trustee's argument that the expansive definition of sale would render the terms "arranged a loan" and "sold a promissory note" superfluous. Without these terms, all types of broker transactions would be included within the scope of § 10233.2, including situations where a broker services a note without having participated in the origination, assignment, or sale of the note. The terms"arranged" and "sold," even when broadly defined, restrict the universe of included broker transactions and are therefore not redundant.

For all these reasons, we read § 10233.2 to incorporate the definition of "sale" in § 10131.1 to apply to both "broker" and "sold" in § 10233.2.

The legislative history of § 10233.2 provides further support for our conclusion that this statute applies to the transactions between FTD and Defendants.

Section 10233.2 was enacted in 1992 through California Senate Bill 1520, under sponsorship by the California Independent Mortgage Brokers Association ("CIMBA"). 1992 Cal. Legis. Serv. Ch. 158 (West). The Senate Committee on Business and Professions described the bill as follows:

This bill is sponsored by the California Independent Mortgage Brokers Association (CIMBA) to specify that the technical requirements of the Commercial Code for perfection of a lender's real property security interest . . . are deemed to have been completed under specified conditions where the real estate broker maintains physical possession of the note under a servicing contract in accordance with provisions of the Real Estate Law.

Committee Report for 1991 California Senate Bill No. 1520, Senate Committee on Bus. & Professions, 1991-92 Reg. Sess. 2 (Apr. 27, 1992) ("Committee Hearing"). This description alone is of little help because it refers merely to"specified conditions," which, when defined, use the same"arranged" and "sold" language as in the statute. See id.

The most revealing passages of the legislative history are the references to our earlier decision in Staff Mortgage, 625 F.2d 281. The real estate investment scheme at issue in Staff Mortgage strongly resembles the one here.[9] Appellants in Staff Mortgage argued that recordation of the assignments should provide constructive possession of the trust deeds sufficient to perfect their security interests under California Commercial Code § 9304(1). Id. at 283. We held, however, that California law at that time was clear: "Perfection of a security interest in an instrument

[could] only occur with the actual possession of the instrument by the secured party or by an agent or bailee on his behalf." Id. We commented that " [h]ad the legislature intended to allow perfection by methods proposed by appellants, they could have done so. " Id. at 284.

Twelve years later, CIMBA acted on this suggestion and sponsored Senate Bill 1520 to change the possession requirement to protect private lenders from loss of their security should the servicing broker file for bankruptcy. In a statement to the California Legislature in support of the bill, CIMBA wrote:

In the case of [In] Re Staff Mortgage and Inv. Corp., 625 F [.]2d 281, the court in denying that recording could perfect, said "Had the legislature intended to allow perfection (that way) . . . they could have done so." This bill follows that suggestion.

S.B. 1520 (Johnston), Delivery of Trust Deeds, A Statement of Support on Behalf of California Independent Mortgage Brokers Association (Apr. 21, 1992).

By itself, CIMBA's statement oF. Supp. ort is unhelpful since we may not assume that its intention in sponsoring the bill was the same as the legislature's intention in passing the bill. See Delaney v. Superior Court, 50 Cal. 3d 785, 801 n. 12, 789 P.2d 934, 943 n. 12 (1990) (courts may not "consider the motives or understandings of an individual legislator even if he or she authored the statute"). However, the Senate Committee on Business and Professions acknowledged CIMBA's position in support of the bill:

The sponsor notes that there have been several recent situations of the bankruptcy of the servicing mortgage loan broker where the bankruptcy court has held that the lender's loan is unsecured, and the lender is an unsecured creditor of the broker, only because the current technical requirement of the Commercial Code for delivery of the note to the lender has not occurred. In these cases, the lender loses, although the position of the borrower and the bankrupt servicing mortgage loan broker is unchanged. This bill was introduced to provide an exception to the technical delivery requirement in specified broker servicing situations that are in accordance with provisions of the real estate licensing laws.

Committee Hearing at 2. While the Committee does not cite Staff Mortgage, its reference to "several recent situations" noted by " [t]he sponsor" strongly suggests that Senate Bill 1520 was intended, at least in part, to eliminate the technical requirement of possession in situations like those in Staff Mortgage.

As noted above, the facts here are nearly identical to those in Staff Mortgage (where the bankrupt party borrowed money secured by assignment of promissory notes and recorded trust deeds). It follows that the legislature intended that § 10233.2 should apply here.

In sum, the text of § 10233.2 and its legislative history lead us to conclude that § 10233.2 incorporates the broad definition of "sale" from § 10131.1. We therefore hold that § 10233.2 applies to the transactions between Defendants and FTD. Defendants have perfected secured interests in the collateral notes and trust deeds, which the Trustee may not avoid under the "strong-arm clause" of 11 U.S.C.§ 544.

We reject the Trustee's argument that, even if § 10233.2 applies, imposition of a constructive trust on the trust deeds under a policy of equitable distribution is warranted. "The extent of the Trustee's rights as a judicial lien creditor . . . is measured by the substantive law of the jurisdiction governing the property in question." 5 Collier on Bankruptcy ¶ 544.02, p. 544-5 (Lawrence P. King ed., 15th ed. rev. 2000). Nothing in California law supports imposing a

constructive trust under these circumstances. The Trustee cannot avoid valid, perfected security interests.

Neither of the two cases cited by the Trustee support his argument here. The Trustee relies on Elliott v. Bumb, 356 F.2d 749, 755 (9th Cir. 1966), for the proposition that " [i]f state law is contrary to federal bankruptcy law, the state law must yield." Yet the Trustee fails to show how the perfection rules of § 10233.2 are contrary to federal bankruptcy law.

The other case the Trustee cites, Hatoff v. Lemons & Assocs., Inc. (In re Lemons & Assocs., Inc.), 67 B.R. 198 (Bankr. D. Nev. 1986), is no more helpful. Lemons involved a situation similar to the instant case, in which the debtor defrauded its investors and commingled their funds. Id. at 210-212. Unlike FTD, the debtor sold mortgage notes to investors but never transferred legal title to them. See id. at 209-10. The investors made an equitable claim for these notes, but the court refused to impose a "constructive trust" because no investor could trace his or her investment to any specific note. Id. at 213. Here, it may be true that Defendants cannot trace their investments to show that the funds they lent to FTD were used to purchase or originate the collateral notes assigned to them. But, unlike in Lemons, Defendants have recorded, perfected security interests in identified collateral notes and trust deeds. Defendants are not asking for an equitable remedy. Rather, it is the Trustee who seeks to impose a constructive trust to avoid the secured interests. Lemons provides no support for such relief.

B. Appeal from Default Judgments (No. 99-55840)

Having concluded that § 10233.2 applies to the transactions between investors and FTD, we next address whether the bankruptcy court properly certified the default judgments against Defaulting Defendants as final under Federal Rule of Civil Procedure 54(b).

Rule 54(b) specifies that "when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the . . . parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." We review a certification of an interlocutory judgment under Rule 54(b) for abuse of discretion. Texaco, Inc. v. Ponsoldt, 939 F.2d 794, 797 (9th Cir. 1991).

We conclude that the bankruptcy court abused its discretion by certifying as final default judgments against Defaulting Defendants that were inconsistent with the bankruptcy court's earlier summary judgment ruling that the security interests of Answering Defendants were deemed perfected under § 10233.2.

The leading case on the subject of default judgments in actions involving multiple defendants is Frow v. De La Vega, 82 U.S. 552 (1872). The Court held in Frow that, where a complaint alleges that defendants are jointly liable and one of them defaults, judgment should not be entered against the defaulting defendant until the matter has been adjudicated with regard to all defendants.[10] Id. at 554. It follows that if an action against the answering defendants is decided in their favor, then the action should be dismissed against both answering and defaulting defendants. Id.

The Eleventh Circuit has extended the rule in Frow to apply to defendants who are similarly situated, even if not jointly and severally liable. See Gulf Coast Fans, Inc. v. Midwest Elecs. Imps., Inc., 740 F.2d 1499, 1512 (11th Cir. 1984); accord 10A Charles Alan Wright et al., Federal Practice and Procedure § 2690, (3d ed. 1998). The plaintiff in Gulf Coast was a distributor of ceiling fans that filed a lawsuit for breach of contract against both the U.S.-based

importer and the Hong Kong-based exporter with which it did business. 740 F.2d at 1505. The plaintiff had obtained a default judgment against the exporter but lost at trial against the importer, when the jury found that it was the plaintiff who had breached the contract. Id. at 1505-06. The court noted that, under Frow, the plaintiff would not have been able to obtain a default judgment against the exporter had it claimed that the importer and exporter were jointly liable. Id. at 1512. Although defendants were not jointly liable, the court vacated the default judgment against the exporter because " [i]t would be incongruous and unfair to allow [the plaintiff] to collect a half million dollars from [the defaulting defendant] on a contract that a jury found was breached by [the plaintiff]." Id.

It would likewise be incongruous and unfair to allow the Trustee to prevail against Defaulting Defendants on a legal theory rejected by the bankruptcy court with regard to the Answering Defendants in the same action. The bankruptcy court justified the conflicting outcomes on the basis that FTD and Defendants were involved in many individual transactions, not simply one transaction with many parties. Nevertheless, each transaction between FTD and Defendants followed an identical pattern with almost identical legal documents. The Trustee filed a single complaint against all 132 investors. More importantly, the central legal issue concerning each transaction was the same. A result in which the bankruptcy court finds § 10233.2 applies to certain Defendants and not to others is both incongruous and unfair. We therefore hold that the bankruptcy court violated the Frow principle and abused its discretion by entering final default judgments, pursuant to Fed. R. Civ. P. 54(b), that directly contradicted its earlier ruling in the same action.[11]

For the foregoing reasons,

In Case No. 99-55851 ("Chang Appeal"), we reverse the judgment of the district court and remand with instructions to affirm the bankruptcy court's grant of summary judgment for Answering Defendants.

In Case No. 99-55840 ("Appeal from Default Judgments"), we reverse the judgment of the district court and remand with instructions to reverse the bankruptcy court's entry of final default judgment against Defaulting Defendants and remand for proceedings consistent with this opinion.

REVERSED and REMANDED.

1
There are four consolidated appeals involving Debtors FTD and JDI. We address two of them, Nos. 99-55840 and 99-55851, in this opinion. We address the other two, Nos. 99-55828 and 99-56060, in an unpublished memorandum filed concurrently with this opinion.

2
Defendants' transactions were primarily with FTD. Because the parties do not draw any meaningful distinction between FTD and JDI, we refer only to FTD unless otherwise noted.

3
The parties agree that " [t]he loans from the Defendants [investors] were documented by a Secured Promissory Note, a Corporation Assignment of Trust Deed, [a] Security Agreement and Pledge of FTD, an Assignment of Note By and Between FTD and the Defendant [investor], a Loan Servicing Agreement, and an unrecorded UCC-1 Financing Statement." Neilson v. Chang (In re First T.D. & Inv., Inc.), 218 B.R. 92, 94 (Bankr. C.D. Cal. 1998) (findings of fact and conclusions of law in support of summary judgment in favor of Defendants) ("Chang").

4
According to Defendants, investors were permitted to select from a list of trust deeds on specific properties, after receiving a prospectus, often written in Mandarin, containing an appraisal of the real property, legal description, property address, photographs of the property, and term sheets describing the interest rate, maturity date, and loan-to-value ratio for the particular proposed loan.

5
Only 32 of the 88 Defaulting Defendants have appealed to this court. They include some investors who had answered the complaint and defended the action, but who believed that specific judgments would impact their own lien interests.

6
The original default judgments contained the same statement. Upon granting the Trustee's motion to certify, the bankruptcy court added the following: "There being no just reason for delay, this judgment entered in favor of the Trustee is hereby deemed a final judgment upon its entry by the Court."

7
Cal. Bus. & Prof. Code § 10233.2 states in full:
For the purposes of Division 3 (commencing with Section 3101) and Division 9 (commencing with Section 9101) of the Commercial Code, when a broker, acting within the meaning of subdivision (d) or (e) of Section 10131 or Section 10131.1, has arranged a loan or sold a promissory note or any interest therein, and thereafter undertakes to service the promissory note on behalf of the lender or purchaser in accordance with Section 10233, delivery, transfer, and perfection shall be deemed complete even if the broker retains possession of the note or collateral instruments and documents, provided that the deed of trust or an assignment of the deed of trust or collateral documents in favor of the lender or purchaser is recorded in the office of the county recorder in the county in which the security property is located, and the note is made payable to the lender or is endorsed or assigned to the purchaser.

8
The parties also dispute the meaning of the phrase "arranged a loan" in § 10233.2. Because we conclude that the phrase "sold a promissory note or any interest therein" includes the transactions between FTD and Defendants, we need not address the meaning of "arranged a loan."

9
The court described the facts in Staff Mortgage as follows:
As a part of its business activity, the bankrupt, Staff Mortgage & Investment Corporation (Staff), would borrow money and execute its note to evidence the loan. To secure its loan, Staff would pledge one or more promissory notes secured by trust deeds which it had in its inventory. The promissory notes and trust deeds were assigned to the lenders. To effectuate the assignments, documents entitled "Collateral Assignment of Note" and "Corporation Assignment of Deed of Trust" were attached to the respective instruments. The "Corporation Assignment of Deed of Trust" was then recorded in the county wherein the real property covered by trust deed was located. The documents, except Staff's note to evidence the loan, remained in the possession and control of Staff.
Appellants are persons who had loaned money to Staff under the above-described procedures. When Staff went into bankruptcy, appellants sought to have the promissory notes and trust deeds turned over to them. The trustee in bankruptcy refused . . . .
625 F.2d at 282.

10
Justice Bradley wrote (quoting from a lower court): "It would be unreasonable to hold, that because one defendant had made default, the plaintiff should have a decree even against him, where the court is satisfied from the proofs offered by the other, that in fact the plaintiff is not entitled to a decree." Id. at 554 (internal quotation marks and citation omitted).

11
On the record before us, we cannot address the Trustee's contention that recent developments render this appeal moot. The Trustee may pursue his mootness argument before the bankruptcy court on remand.

California Business and Professions Code Section 10131.1

10131.1. (a) A real estate broker within the meaning of this part is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

(b) As used in this section:

(1) In the business means any of the following:

(A) The acquisition for resale to the public, and not as an investment, of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year.

(B) The sale to or exchange with the public of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year. However, no transaction negotiated through a real estate licensee shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(C) The making of eight or more loans in a calendar year from the person s own funds to the public when those loans are held or resold and are secured directly or collaterally by a lien on residential real property consisting of a single dwelling unit in a condominium or cooperative or on any parcel containing only residential buildings if the total number of units on the parcel is four or less. However, no transaction negotiated through a real estate broker who meets the criteria of subdivision (a) or (b) of Section 10232 shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(2) Sale, resale, and exchange include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property, except the original issuance of a promissory note by a borrower or a real property sales contract by a vendor, either of which is to be secured directly by a lien on real property owned by the borrower or vendor.

(3) Own funds means either of the following:

(A) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the person s financial statements, whether secured or unsecured.

(B) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statement of an affiliate of the person, whether secured or unsecured.

(4) Own funds does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

2011 California Code
Business and Professions Code
DIVISION 4. REAL ESTATE [10000 - 11506]
ARTICLE 5. Transactions in Trust Deeds and Real Property Sales Contracts
Section 10233.2

Universal Citation: CA Bus & Prof Code § 10233.2 (through 2012 Leg Sess)

For the purposes of Division 3 (commencing with Section 3101) and Division 9 (commencing with Section 9101) of the Commercial Code, when a broker, acting within the meaning of subdivision (d) or (e) of Section 10131 or Section 10131.1, has arranged a loan or sold a promissory note or any interest therein, and thereafter undertakes to service the promissory note on behalf of the lender or purchaser in accordance with Section 10233, delivery, transfer, and perfection shall be deemed complete even if the broker retains possession of the note or collateral instruments and documents, provided that the deed of trust or an assignment of the deed of trust or collateral documents in favor of the lender or purchaser is recorded in the office of the county recorder in the county in which the security property is located, and the note is made payable to the lender or is endorsed or assigned to the purchaser.

2011 California Code
Business and Professions Code
DIVISION 4. REAL ESTATE [10000 - 11506]
ARTICLE 5. Transactions in Trust Deeds and Real Property Sales Contracts
Section 10233

Universal Citation: CA Bus & Prof Code § 10233 (through 2012 Leg Sess)

A real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract shall comply with each of the following requirements:

(a) The licensee shall have a written authorization from the borrower, the lender, or the owner of the note or contract, that is included within the terms of a written servicing agreement that satisfies the requirements of paragraphs (1), (2), (4), and (5) of subdivision (k) of Section 10238.

(b) The licensee shall provide the lender or the owner of the note or contract with at least the following accountings:

(1) An accounting of the unpaid principal balance at the end of each year.

(2) An accounting of collections and disbursements received and made during each year.

(3) Each accounting required under this subdivision shall identify the person who holds the original note or contract and the deed of trust evidencing and securing the debt or obligation for which the accounting has been provided.

(c) The licensee shall provide to the lender or the owner of the note or contract written notification within 15 days of the occurrence of any of the following events:

(1) The recording of a notice of default.

(2) The recording of a notice of trustee s sale.

(3) The receipt of any payment constituting an amount greater than or equal to five monthly payments, together with a request for partial or total reconveyance of the real property, in which case the notice shall also indicate any further transfer or delivery instructions.

(4) The delinquency of any installment or other obligation under the note or contract for over 30 days.

(Amended by Stats. 2005, Ch. 153, Sec. 2. Effective January 1, 2006.)

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	) Chapter 11
	)
WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1]	) Case No. 17-12560-(KJC)
	)
	) Jointly Administered
	)
Debtors.	)
	) **Re Docket No. __**

ORDER TERMINATING THE DEBTORS'
EXCLUSIVITY PERIOD PURSUANT TO 11 U.S.C. § 1121(d)(1)

Upon consideration of the motion (the "Motion") of Lise La Rochelle, *et al*., Noteholders (together the "Secured Noteholders"), for an order terminating the Debtors' exclusive period to file and solicit votes for a plan in the above-captioned Chapter 11 cases pursuant to Section 1121(d)(1) of the Bankruptcy Code; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (a) counsel for the Debtors; (b) the United States Trustee for the District of Delaware; (c) counsel to the Official Committee of Unsecured Creditors; (d) counsel to the *Ad Hoc* Committee of Noteholders; (e) counsel to the *Ad Hoc* Committee of Unitholders; and (k) all parties that have filed a notice of appearance and requested service in these Chapter 11 cases pursuant to Bankruptcy Rule 2002; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the

[1]The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks California 91423. The complete list of Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the noticing and claims agent at www.gardencitygroup.com/cases/wgc.

relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that, pursuant to 11 U.S.C. § 1121(d), the period during which the Debtors have the exclusive right to file and solicit acceptances of a plan is hereby terminated so as to permit the Secured Noteholders to file and seek confirmation of a plan; and it is further

ORDERED that the Court shall retain exclusive jurisdiction over the implementation of this Order.

Dated: _____, 2018
Wilmington, Delaware

_____
United States Bankruptcy Judge