

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	CASE NO. 13-53483-BEM
)	
ROHRIG INVESTMENTS, LP, et al.,)	CHAPTER 11
)	
Debtor.)	
<hr/>)	
)	
3116-3136 ROSWELL ROAD, LLC,)	
)	
Plaintiff,)	Adversary Proceeding
)	
VS.)	No. <hr style="display: inline-block; width: 150px; border: none; border-bottom: 1px solid black;"/>
)	
ROHRIG INVESTMENTS, LP,)	
and GEORGE W. ROHRIG, JR.,)	
)	
Defendants.)	
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VERIFIED COMPLAINT

Plaintiff 3116-3136 Roswell Road, LLC (“3116”) hereby files its Complaint, as follows:

Jurisdictional Allegations

1.

3116 is a limited liability company organized and existing under the laws of the State of Georgia with its principal place of business located at 3060 Peachtree Road, Suite 330, Atlanta, Fulton County, Georgia 30305.

2.

Defendant Rohrig Investments, LP (“Rohrig”) is a limited partnership organized and existing under the laws of the State of Georgia.

3.

George W. Rohrig, Jr. (“George Rohrig”) is a citizen of Georgia residing in Fulton County, Georgia.

4.

Rohrig is the Debtor in possession in this bankruptcy case.

5.

This is an adversary proceeding commenced pursuant to Rules 7001(2) and (7) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). This adversary proceeding arises in and relates to the case of In re Rohrig Investments, LP, et al., Chapter 11, Case No. 13-53483-BEM (the “Case”) pending in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”).

6.

This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(a) and 157(a).

7.

This adversary proceeding is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), and this Court can constitutionally hear and determine this adversary proceeding.

8.

Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

General Allegations

9.

3116 owns real property in the Buckhead district of Atlanta situated along Roswell Road (the “Property”).

10.

The Property currently operates as a surface street parking lot including storage units with the street address 3116, 3126 and 3136 Roswell Road.

11.

3116 has agreed to sell the Property to Hanover R.S. Limited Partnership (“Hanover”) pursuant to an agreement dated August 12, 2014 for a purchase price exceeding \$10 million.

12.

Rohrig has filed an Affidavit Regarding Parking Rights (the “Affidavit”) in the Superior Court of Fulton County, Deed Book 54107 Page 41-54. A true and correct copy the Affidavit is attached hereto as Exhibit A.

13.

The Affidavit claims that “the rights of [Rohrig] pursuant to the Parking Rights Agreement are in full force and effect and are binding upon Land Owner and any subsequent owner of the Land.” Affidavit, ¶ 3.

14.

The Affidavit constitutes a cloud on 3116’s title.

15.

Rohrig has no actual interest in the Property.

16.

Rohrig's Schedules filed in this bankruptcy case listing its assets do not identify the Property as property of the estate.

17.

3116 therefore seeks relief from this Court requiring Rohrig to cancel the Affidavit of record and award damages for slander of title.

Background

18.

Rohrig was a member of Loudermilk/Rohrig 3084, LLC ("Loudermilk/Rohrig 3084").

19.

At one time, Loudermilk/Rohrig 3084 owned the Property.

20.

Loudermilk/Rohrig 3084 intended to sell the Property to Novare Development, LLC ("Novare") and entered into an Option Agreement for that purpose dated January 15, 2005.

21.

Pursuant to a Second Amendment to Option Agreement dated January 19, 2007 (the "Second Amendment"), Novare, Loudermilk/Rohrig 3084 and Rohrig agreed that Loudermilk/Rohrig 3084 and Rohrig (collectively, "Seller") would have an opportunity to participate in the ownership of an LLC that would own and operate the parking garage that Novare intended to build on the Property. The Second Amendment is included as an Exhibit to the Affidavit.

22.

In order to participate in ownership of the LLC that would own and operate the parking garage, Seller was required to pay \$750,000.00 to Novare.

23.

The parking garage was never built.

24.

No LLC was ever formed to own the parking garage.

25.

Seller never paid for an LLC interest in the parking garage.

26.

Novare bought the Property but did not develop it.

27.

Instead, Novare sold the Property to 305-309 Pharr Road, LLC on March 31, 2008 (“Pharr LLC”).

28.

3116 is the successor by name change to Pharr LLC.

29.

Rohrig had no interest in Pharr LLC and has none in 3116.

30.

R. Charles Loudermilk, Sr., Robert C. Loudermilk, Jr. and Gregory D. Howard owned Pharr LLC and own 3116.

31.

In connection with the sale to Pharr LLC, Novare desired to confirm that it had no obligations remaining under the Second Amendment.

32.

The Option Agreement, as amended, was terminated pursuant to a Termination of Option Agreement dated March 31, 2008 (the "Termination Agreement"). A true and correct copy of the Termination Agreement is attached hereto as Exhibit B.

33.

Contemporaneously with the execution of the Termination Agreement, R. Charles Loudermilk, Sr., individually and George Rohrig, individually, executed a document (the "Hand Written Agreement") reading as follows: "In exchange for termination of the Second Amendment to Option Agreement between Loudermilk/Rohrig 3084, LLC, Rohrig Investments, LP, and Novare Development, LLC by George W. Rohrig, Jr., R. Charles Loudermilk, Sr. agrees to honor any and all rights that Mr. Rohrig currently has pursuant to that document. s/ Robert C. Loudermilk s/ George Rohrig"

34.

George Rohrig individually had no individual rights under the Second Amendment.

35.

The Hand Written Agreement did not purport to bind Pharr LLC.

36.

The Hand Written Agreement was not recorded in the Property's chain of title.

37.

What is now 3116 has owned and operated the Property since March 31, 2008.

38.

As of today, there is still no parking garage on the Property.

39.

Rohrig filed bankruptcy on February 19, 2013.

40.

Rohrig filed Schedules of its assets in the bankruptcy case on April 1, 2013.

41.

Rohrig did not claim any interest or parking rights in the Property in any of its Schedules.

42.

Rohrig is a member of other LLCs involving members of the Loudermilk family, namely Loudermilk/Rohrig LLC, 335 West Ponce Shoppes, LLC and Loudermilk/Rohrig 3261, LLC (the “Entitites”).

43.

By Motion dated January 22, 2014, the non-debtor members of the Entities sought relief from the automatic stay to enforce dissociation provisions of their operating agreements so as to remove Rohrig as a co-managing member.

44.

This Court granted the Motion on August 19, 2014.

45.

Rohrig has appealed.

46.

Shortly after this Court's ruling permitting dissociation, the non-debtor members of the Entities dissociated from Rohrig and it ceased to be a co-managing member.

47.

In retaliation, Rohrig filed the Affidavit on August 27, 2014 in order to interfere with the sale of the Property.

48.

In addition, John Frasier, an employee of Rohrig, called Adam Harbin at Hannover to assert Rohrig's claimed parking rights.

49.

As a result of the actions of Rohrig and George Rohrig, Hanover has refused to proceed toward a closing of the Property.

50.

Hanover has demanded that 3116 suspend the time that earnest money would "go hard" because of the claims made by Rohrig and George Rohrig.

51.

As a consequence, 3116 has not received \$600,000 in what was to be non-refundable earnest money as of October 13, 2014 and risks the loss of a contract to sell the Property for a price exceeding \$10 million.

Count One

(Request for Determination of Interest in Property)

52.

Rohrig asserts that it has parking rights that encumber the Property.

53.

3116 denies that Rohrig has any interest in the Property.

54.

This Court should determine that Rohrig has no interest in the Property pursuant to Fed. Bankr. R. 7001(2).

County Two

(Declaratory Judgment)

55.

This claim is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

56.

Rohrig asserts that it has parking rights that encumber the Property.

57.

3116 denies that Rohrig has any interest in the Property.

58.

An actual controversy exists between 3116 and Rohrig concerning their respective rights and interest in the Property.

59.

3116 is entitled to declaratory relief establishing that Rohrig has no interest in the Property.

Count Three

(Slander of Title)

60.

3116 owns the Property.

61.

Rohrig placed on the public record the Affidavit claiming an interest in the Property.

62.

George Rohrig, individually, signed the Affidavit.

63.

The representation made by Rohrig and George Rohrig is untrue.

64.

Rohrig's claim impugns 3116's title to the Property.

65.

To the extent Rohrig had any rights at some point, those rights related solely to the opportunity to purchase a participation in a limited liability company, which is personalty and not an interest in real property.

66.

Any such rights terminated upon the execution of the Termination Agreement.

67.

Rohrig's claim to an interest in the Property was made without privilege.

68.

Rohrig and George Rohrig have acted with malice in response to the efforts of the non-debtor members of the Entities to enforce the dissociation provisions of the various LLC operating agreements.

69.

As a direct and proximate result of the slanderous statements with respect to the Property, 3116 has been injured and suffered special damages.

70.

Those damages arise from the delay in delivery of \$600,000 of earnest money that was to have been conveyed to 3116 by October 13, 2014, and the potential loss of a contract for the sale of the Property exceeding \$10 million.

WHEREFORE, Plaintiff requests that this Court:

- (a) Grant judgment for Plaintiff and against Rohrig and George Rohrig on the Complaint;
- (b) Declare the rights of the parties, including a declaration that Rohrig has no interest in the Property;
- (c) Grant judgment for 3116 and against Rohrig and George Rohrig for damages sustained as a result of Rohrig's slanderous statements impugning 3116's title to the Property;
- (d) Tax all costs against Rohrig and George Rohrig; and
- (e) Grant 3116 such additional relief as this Court deems just.

This 17th day of October 2014.

s/ Michael J. King

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