

1 Restated Bylaws of Lake Wildwood Association. Pursuant to the Restrictions, Article IV,
2 Assessments, Section 2, Creation of Lien and Personal Obligation for Assessments, the Debtors
3 agreed by acquiring title to a lot in Lake Wildwood to personal liability for paying assessments
4 (“Assessments”) and agreed that “all assessments levied pursuant to [the Restrictions], together
5 with late fees, interest, costs and attorney’s fees . . . , shall be a charge and a continuing lien upon
6 each lot against which each assessment is imposed.” Mariani Dec. ¶ 3 and Exhibit 2, (excerpt
7 from Restrictions, Article IV, portions of Sections 2 & 6).

8 Article IV, Section 6, Collection of Assessments, of the Restrictions provides that
9 Wildwood may enforce the Assessment lien created by Section 2 by providing notice pursuant to
10 Civil Code § 5660 (formerly § 1367). The Debtors failed to make their annual Assessment
11 payment due on May 7, 2013 in the amount of \$1,971.33 and all assessments, special assessments,
12 late fees, interest and other charges since that time. Wildwood caused to be recorded on May 14,
13 2013 in the Nevada County Recorder’s Office a Notice of Delinquent Assessment (“Notice”),
14 setting forth the unpaid amounts at that time, in the sum of \$2,733.03, and providing as follows:

15 Additional monies shall accrue under this claim at the rate of the
16 claimant’s periodic or special assessments, plus permissible late charges,
17 costs of collection and interest, if any, that shall accrue subsequent to the
date of this notice.

18 Mariani Dec. ¶ 4, Exhibit 3 (Notice of Delinquent Assessment).

19 The Debtors have made no payments since Wildwood caused the recording of the Notice,
20 and the current outstanding amounts owed to Wildwood, and secured by the Debtors’ Residence,
21 total \$30,011.13, which is broken down as \$25,011.13 in Wildwood assessments and charges and
22 \$5,000 in attorney’s fees collectible under Article IV, section 6(a)(i) of the Restrictions. Mariani
23 Dec. ¶ 5, Exhibit 4 (transaction history for Debtors). The Debtors did not schedule the outstanding
24 amount owed to Wildwood as secured and underestimated the amount by approximately \$10,000.
25 DN 1 (Petition & Schedules and SOFA).

26 Wildwood filed a Proof of Claim (“Proof of Claim”) on August 20, 2018. Mariani Dec. ¶
27 6, Exhibit 5 (Proof of Claim).
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Debtors listed *no* ongoing assessments to be paid in the Plan to Wildwood and did not list any recent payments to Wildwood on their Statement of Financial Affairs. DN 1.

The lack of payments by the Debtors to Wildwood for such a long period of time is likely due to the fact that they have been in and out of chapter 13 bankruptcy cases since December 16, 2013, when they filed case number 13-35754. They confirmed a plan in that case on March 4, 2015. That case was dismissed on January 26, 2017, due to failure to make payments in excess of \$20,000. They filed another chapter 13 on May 2, 2017 as case number 17-23011. That case was dismissed on August 20, 2017 for failure to file tax returns and provide documents to the chapter 13 trustee. Neither the Debtors nor their counsel appeared at the hearing regarding that dismissal. The Debtors filed the instant case on July 18, 2018, and so far, have failed to appear at the first meeting of creditors.

2. Discussion

The Plan should not be confirmed because it fails to treat the Assessment lien as a secured claim.

The Plan does not provide for payment of the Assessment lien amount as a secured claim, nor does it provide for payment of postpetition Assessments going forward. The Plan, therefore, does not meet the requirements of 11 U.S.C. § 1325(a)(5) for treatment of secured claims. The Assessment lien should be listed under class 1 as a secured claim in section 3.07 with interest and payments pursuant to the Restrictions.

The fact that the Debtors treated the Assessment lien claim improperly also makes it impossible to determine, once the Assessment lien claim is treated correctly, whether the Plan will meet the “best interests of creditors” test under 11 USC § 1325 (a)(4). That section requires that unsecured creditors receive at least as much under the plan as they would have received in a Chapter 7 liquidation.

3. Conclusion

Debtors improperly scheduled the Assessment lien claim as unsecured and understated the amounts owed to Wildwood. Wildwood, therefore, requests that the Court deny confirmation of

1 the Plan unless the Debtors amend their schedules and Plan to reflect the Assessment lien claim as
2 secured and provide for appropriate treatment pursuant to the Bankruptcy Code.

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4 Respectfully Submitted
5 PARKINSON PHINNEY

6 Dated: August 21, 2018

7 By: /S/ Donna T. Parkinson
8 Donna T. Parkinson
9 Attorneys for Lake Wildwood Association
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