

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

In re:	§	
	§	Chapter 11
BRANTLEY LAND & TIMBER COMPANY, LLC,	§	Case No. 15- 20584-JSD
	§	
Debtor.	§	

SECOND AMENDED SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 6th day of January, 2016, by and between R. Michael Souther, the Chapter 11 Trustee (the “Trustee”) of the captioned Bankruptcy Estate of Brantley Land & Timber Company, LLC (Debtor) and State Bank and Trust Company, successor to Security Bank of North Fulton (State Bank).

Background Facts

1. On July 16, 2015, Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code §101 *et seq.* (the “**Bankruptcy Code**” or “**Code**”) in the United States Bankruptcy Court, Southern District of Georgia, Brunswick Division (“Petition Date”).
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 151, and 157, and the Local Rules of the District Court.
3. Pursuant to the Court’s ruling of September 10, 2015, R. Michael Souther was appointed as Chapter 11 Trustee in this matter.

Factual History

4. The Debtor is a real estate development company which originally developed and held over 1,200 lots in a contiguous development in Brantley County, Georgia, consisting of five

subdivisions – Pine Crest, Fox Ridge, Satilla Plantation, Satilla Pasture, Eagle Crest – with multiple phases. On or about April 25, 2007, Debtor borrowed \$10,000,000.00 from Security Bank of North Fulton (Security Bank), predecessor-in-interest to State Bank, and signed a Secured Promissory Note (the “**Note**”). As security for the Note, Debtor executed a Deed to Secure Debt in favor of Security Bank over the Brantley County property. (the “**Real Estate Development**”). The Deed to Secure Debt and Security Agreement from Brantley Land to Security Bank was recorded on May 4, 2007 in Deed Book 403, Folio 77 – 100 with assignments of promissory notes and deeds to secure debt from third party buyers recorded beginning in Deed Book 403, Page 101 through Deed Book 472, Page 255 in the Office of the Clerk of the Superior Court of Brantley County, Georgia.

5. On or about May 14, 2010, State Bank acquired the loan documents by assignment from the Federal Deposit Insurance Corporation as receiver for Security Bank. A true and correct copy of the Receiver’s Assignment is attached to State Bank’s Motion to Dismiss. (Doc. #104)¹

6. On July 5, 2011, State Bank obtained a judgment in Fulton County Superior Court against Debtor and its principals in the amount of \$9,672,856.88 plus interest and attorney fees and a Writ of Fieri Facias was entered in the Office of the Clerk of the Superior Court of Fulton County, Georgia on November 26, 2013, at lien number 2794, page 361.

7. a. On July 5, 2011, the Superior Court entered an Order for Appointment of a Receiver and appointed Jerry W. Harper and the accounting firm of Schell & Hogan, LLP, both of Saint Simons Island, Georgia, as Receiver of Brantley Land and Timber Co., LLC and of the Subject Brantley County, Georgia, property with full power and authority to take immediate possession of Brantley Land and its property with full powers of management including powers to engage persons necessary and proper for the administration of Brantley Land. The Receivership Order also directed

¹(Doc. #) refers to a document filed in the United States Bankruptcy Court for the Southern District of Georgia in Case No. 15-20548-JSD.

Brantley Land and its “officers, directors, representatives, agents, employees, members, owners, accountants, bankers and/or partners, and anyone acting on the behalf of, through or under them... to fully comply with the order and provide the receiver with any information needed.” No bond was required.

b. On August 26, 2011, the Superior Court amended the order to allow the receiver to collect fees and expenses upon approval by the Court from collected sales payments and to require 90 day reports from the receiver with respect to assets, liabilities and costs.

c. On February 23, 2015, the Superior Court amended the order to add the following:

5. Notwithstanding and in addition to the foregoing, the Receiver shall have the full power and authority to file any action under Title 11 of the United States Code, to include §§1101, et seq., a Chapter 11 reorganization or liquidation proceeding by and on behalf of Defendant Brantley Land and Timber, Co., LLC with full power and authority to act on behalf of Defendant Brantley Land and Timber, Co., LLC in its capacity as Debtor/Debtor-in-Possession in said proceedings under Title 11 of the Bankruptcy Code together with all of the attendant powers and obligations under Title 11 as if said Receiver were a managing member or executive officer of said Defendant with the full power and authority of 100% of the members of Defendant by vote and appropriate resolution. The Receiver shall have authority to retain counsel under terms satisfactory to Receiver and to prepare and execute a resolution on behalf of said Defendant approving and authorizing the filing of a bankruptcy petition.

In the event of such a bankruptcy filing, the Receiver shall file, in lieu of the filings required under paragraphs 3. A. and B. of this order, a copy of the bankruptcy petition as filed in a United States Bankruptcy Court together with the monthly operating reports filed with United States Trustee and the Bankruptcy Court in such case as and when they are filed.

8. Following the filing of this Chapter 11 on July 16, 2015, (Doc. #1), the Court appointed R. Michael Souther as Chapter 11 Trustee.

Post-Petition Activity

9. Debtor and State Bank had agreed upon an Interim Consent Order Authorizing use of Cash Collateral prior to the filing of a Motion to Use Cash Collateral of State Bank & Trust Company on August 17, 2015. (Doc. #37). Debtor has been operating under the terms of that agreement with State Bank receiving payments in the amount of \$5,000 per month on the first of each month. The motion was continued and prior to the entry of the Cash Collateral Consent Order, State Bank filed an Objection and Withdrawal of Consent to Use of Cash Collateral (Doc. #100) on November 5, 2015, which objection is pending,

10. On October 1, 2015, the attorneys for the Debtor filed applications for compensation (Doc. #84/87) to which State Bank objected on November 5, 2015 (Doc. #99) which applications are pending.

11. State Bank filed a Motion to Dismiss and Motion for Relief from Stay on November 9, 2015 (Doc. #104) which matter is pending.

Compromise

There have been changes in circumstances which allow the parties to reassess goals and obligations as to the other in the creditor/debtor relationship, and to reach an agreement. In consideration of the payment by Debtor of \$250,000.00 to State Bank to be applied toward the debt owing to it, the Bank will, upon entry of a final Order of this Court approving this compromise and settlement, and upon receipt of those funds:

(1) relinquish its under-secured claim/position in this case by surrendering all of its collateral to the Debtor by and through the execution of all necessary quitclaim deeds, releases, cancellations and/or assignments to be prepared by or on behalf of the Chapter 11 Trustee, to include the cancellation of the security deed held by it and identified as the Deed to

Secure Debt and Security Agreement from Brantley Land to Security Bank recorded on May 4, 2007 in Deed Book 403, Folio 77 – 100 with assignments of promissory notes and deeds to secure debt from buyers recorded beginning in Deed Book 403, Page 101 through Deed Book 472, Page 255 in the Office of the Clerk of the Superior Court of Brantley County, Georgia, and any further collateral documents held by it related Debtor that may hereafter be discovered; State Bank has now satisfied its obligations under its Loss Share Agreement with the FDIC.

(2) amend its claim #3 to convert its claim to a general unsecured claim;

(3) dismiss its Motion to Dismiss Case or in the Alternative for Relief from the Automatic Stay (Doc. #104);

(4) dismiss its Objection and Withdrawal of Consent to Debtor's Use of Cash Collateral (Doc. #100);

(5) dismiss its Objection to the First Application for Attorneys' Fees (Doc. #99) by Debtor's counsel;

(6) waive any objections to an Agreement or the confirmation of a Chapter 11 Plan whereby *it and* the Debtor elect to abandon/quitclaim all of *their* interests in any roadways, access easements, or wetlands to include any redemption rights titled in Debtor *and Lender as an interested party*, to Brantley County, the Tax Commissioner of Brantley County or any other party approved by the Court either by motion and/or by the terms of a confirmed Chapter 11 Plan or otherwise;

(7) agree to waive any objections to the abandonment or release of any rights of redemption held by *it and the* Debtor with respect to any ad valorem tax sales or quiet title actions that have been, will, or may be conducted by the Brantley County Tax Commissioner or other governmental body either by motion and/or by the terms of a confirmed Chapter 11 Plan or

otherwise with respect to real property which rights *it and* the Debtor intend to release or quitclaim to *Brantley County*, the Brantley County Tax Commissioner or other appropriate governmental body;

(8) agree to waive any objections to the intended abandonment or release by *it and the Debtor* of any rights or entitlements held by *the parties* as to any lands of Debtor located in Brantley County, Georgia, with respect to roads, access, water or riparian rights either by motion and/or by the terms of a confirmed Chapter 11 Plan or otherwise;

The Debtor and Lender shall each execute such quitclaim deeds to be prepared by or on behalf of the Chapter 11 Trustee or the Brantley County Tax Commissioner as are necessary to effectuate the provisions of paragraphs 6, 7, and 8 under the Compromise heading.

(9) forbear as against Debtor from collection or levy on the July 5, 2011, judgment State Bank holds against Debtor and others. State Bank shall fully cooperate with Debtor to execute quitclaim deeds or other documentation if and when presented to State Bank by the Debtor which documentation is intended to satisfy any third parties and to expressly acknowledge that State Bank has no rights to and/or in any of the real property now or previously owned by Debtor. Debtor and State Bank explicitly retain all rights and do not forbear in any way against Rodney A. Cobb, Daniel A. Dukes, and Victor C. Smith with respect to or by virtue of the said judgment or as to any cause of action against said parties afforded by law to Debtor or State Bank. Notwithstanding the existence of the aforesaid judgment, Debtor shall have the absolute right to negotiate, settle, and/or release any claim, right or title issue with any party (other than the aforesaid three parties against which said judgment applies) without the necessity of the consent of or a written release by State Bank as if the judgment had been/were fully satisfied and released. Except as stated herein, this forbearance shall affect

neither the unsecured claim nor the secured claim (such secured claim is deemed unsecured for the purpose of plan distributions in this case) of State Bank for the entire amount owing as of the petition date by Debtor to it (less post-petition payments made by Debtor);

(10) waives any objections it may have to the continued possession and use by Debtor/Debtor-in-Possession of any and all assets transferred, indirectly or directly to Debtor/Debtor-in-possession under the auspices of the Chapter 11 Trustee or under the terms of a confirmed plan, or other approval by the Bankruptcy Court;

(11) will provide Debtor the name of a contact(s) with the State Bank with whom authority is vested to execute documents as may be necessary to fulfill the terms of this Agreement as may be approved by this Bankruptcy Court;

(12) and, except as stated otherwise herein, the rights of State Bank as an unsecured creditor in the case are not affected.

Execution of this document by the parties shall signify:

1. That they are each bound to co-operate with each other and the Court to perform all acts necessary to assist the Debtor by and through the Trustee to obtain the Bankruptcy Court's approval without delay or interference.

2. That they request the Bankruptcy Court to: (a) approve this Agreement; (b) determine that the Agreement was made in good faith; and (c) determine that adequate notice of the hearing on this approval of the Agreement was given.

3. That the Approval Order does not become a "Final Order" unless and until: (a) the time to file a timely appeal under Fed.R.Bankr.P. 8002 from the order passes and no such timely appeal is filed, or (b) if a timely appeal is filed, then after all timely filed appeals are dismissed with prejudice or the Approval Order is affirmed on appeal and is not subject to further

timely appellate review, whether by appeal , petition for rehearing, petition for certiorari or otherwise.

4. That the payments and all document execution required by this agreement shall be completed within 10 days of the Approval Order becoming final, or as soon thereafter as is practicable.

This 6th day of January, 2016.

Brantley Land & Timber, LLC

By: /s/ R. Michael Souther
R. Michael Souther
Chapter 11 Trustee of the
Bankruptcy Estate of
Brantley Land & Timber, LLC

and

State Bank & Trust Company,
successor to Security Bank of
North Fulton

By: /s/ Joseph P. Quirk
Joseph P. Quirk, Esq.
Attorney for State Bank &
Trust Company