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October 13, 1994

(BY HAND DELIVERY)

58395 - Limited Edition Condominium Owners Association, Inc., et al. vs. Tittle Construction Co., Inc., et al.; Washington County Law Court at Johnson City, Tennessee; Civil Action Number 15010

Mr. Samuel B. Miller, II
WELLER, MILLER, CARRIER, MILLER & HICKIE
160 West Springbrook Drive
Johnson City, TN 37601

Dear Sam:

Lee Davis and I appreciate the opportunity to meet with you for the purpose of discussing alternative settlement resolutions. In accordance with our discussions in your office on the afternoon of October 12, 1994, the defendants are hereby soliciting from the plaintiffs a proposal which the defendants can accept and that their insurance liability carriers may find palatable under all the circumstances. THIS IS NOT AN OFFER. It is merely a solicitation for a proposal that Lee and I feel will be acceptable, subject to certain conditions.

Tom McKee's previous proposal contains all of the reasons why the insurance companies feel very confident that they will prevail in the Federal Court declaratory judgment action. These reasons range from the threshold issue of notice to the "work product" exclusion. While Lee and I, in our representation of

Purchase price:
King - 128,577
Collins - 122,000
Neary - 121,500
} 72,577

190
12
8

Lawyers fee??
Property rights?

Tittle Construction Company and the Tittle Family may not agree with the position of the carriers, the prospect of losing all contribution to a settlement by the insurers is certainly very real. In addition, a new factor has now entered the equation. Lee Davis discussed with you the financial condition of Tittle Construction Company and Walter E. Tittle, Sr. Lee will, the first part of the week of October 17, 1994, make available to you and the Board of Directors of The Limited Edition Homeowners Association, subject to a confidentiality agreement, financial records confirming that the defendants are virtually judgment-proof. Thus, the new factor that has risen its head and entered the equation is Walt Tittle's reconciliation with the idea of placing himself and his company in bankruptcy. Mr. Tittle is a proud man who can point to 40 years of feeding his family and making a sufficient profit from year to year in the contracting business without ever going into bankruptcy to defeat creditors--something very few contractors who have been in the business that long can claim. However, he has had this matter hanging over him for over two years and has concluded that it must, at some time, come to an end. He is at peace with his decision and, thus, the defendants are now in possession of a most compelling bargaining chip.

In light of the above, Mr. Tittle is willing to offer what he offered the last time, but no more with the exception of one of the lots in Limited Edition. If we cannot get all of the parties to come to the table on this basis, the defendants are prepared to file their bankruptcy petitions. When the petitions are file, this entire case--including the counterclaims--will go to the bankruptcy court. The defendants will not, at that point, care how much of a judgment the plaintiffs receive and will not care if there is any insurance coverage. The defendants will, however, have the opportunity to vigorously and judiciously press for judgments against counter-defendants Gregory, Neal, and the Association in hopes of garnering funds to pay off the creditors. I do not have to tell you, Sam, that the trial at that point will not be about Walt Tittle, who could very well confess judgment; rather, the trial will focus on what we perceive to be the insidious, malicious conduct of Gregory and Neal, both personally and as representatives of the Association. The actual trial of the case will not only involve Gregory and Neal, but will also involve Roger Brown as a witness for the Tittles' case against the Association, as well as several other individuals who knew about the negotiations for the sinkhole repair and failed to take steps to halt the Gregory/Neal conduct.

Accordingly, we solicit the following proposal so that we might take it to the insurance carriers in an effort to extract contribution to a settlement fund:

1. The defendants or some combination are to purchase Units 34, 36, and 38 for $300,000 subject to approved bank financing. (As we explained, bank approval is pending);

2. The defendants are to deed to the Association one of the two remaining lots they own in Limited Edition, subject to removing bank liens against the property;

3. The defendants are to attempt to arrange for payment of $190,000 in cash to the Association;

4. Leases are to be negotiated with Mr. and Mrs. King, Mrs. Collins, and Mrs. Usary; and,

5. The defendants, upon purchase of the three units, would enter into a written agreement with the Association exempting the Association from the responsibility of repairs to the outside of the units. The agreement would be filed in the Register's Office and would run with the land to any subsequent purchasers.

In our meeting, we explained why multi-year leases, subject to certain "out" provisions, were required in light of winter cash-flow problems of Tittle Construction Company. We also explained that the defendants will have to bear the cost of repairing these units and some day placing them on the market, probably at a loss. The defendants would use the proceeds of the sale of one of the remaining lots to cushion these expenses and financial loss. Hopefully, the defendants will realize $25,000 on the sale of the remaining lot since they were offered $50,000 for the lots shortly before this litigation was initiated.

We discussed the reasons why we feel the $190,000 additional cash would make the plaintiffs reasonably "whole". A portion of the money would go to Collins, King, and Usary to supplement what their units would have been worth, but not for the damage. The Association may want to make some settlement with the other named plaintiffs in accordance with the estimates of Joe Hale, but this is within the sole discretion of the Association. There is obviously your fee and expenses as well as some reimbursement to the coffers of the Association for its expenses incurred for drainage systems, sinkhole repair (which we contend it did not have to incur), expert witnesses, court reporters, etc.

In terms of the cash fund we are attempting to garner, we are assuming that the $150,000 offered by the three carriers is still on the table (although the Bituminous offer technically expired September 15, 1994). We are presently attempting to extract an additional $10,000 from each carrier. We are also attempting to obtain from Unigard Insurance Company, the carrier for the Association, a payment of $10,000 on the counter-claim which the defendants would immediately place in escrow to be paid to the Association. Unigard is attempting to place on notice the separate Homeowners insurance carriers for Gregory and Neal as of June, 1992, assuming it was not Unigard. These carriers might likewise be a source of contribution to the settlement fund. Finally, Gregory and Neal might reasonably be called upon personally to contribute, for example, $5,000 each to the fund in an attempt to reach the $190,000 level, if the funds cannot be made up among the insurance companies.

Based upon the above explanation, you can readily see that we feel that we can still obtain $150,000, but the additional $40,000 is tenuous at best. This is the reason that a firm proposal from the plaintiffs is requested. We would then be able to demonstrate to all four carriers that this proposal will "stop the bleeding", and is reasonable under all circumstances.

The acceptance of the proposal as set forth above would also be conditioned upon the insurance carrier's ability to resolve their differences in the case pending in the United States District Court at Greeneville. Remarkably, Bituminous did not even agree to extend a defense and, thus, Commercial Union and Aetna have been bearing all the cost. They will understandably want a contribution from Bituminous to reimburse them for a portion of the defense expenses. Furthermore, Commercial Union and Aetna will not want to contribute an additional $10,000 to a settlement fund without a like amount being contributed by Bituminous. You will recall that Bituminous lacked the ability to be quickly responsive to the needs of its insured the last time we attempted to settle this matter. Therefore, we feel that a firm demand from the plaintiffs is the best hope we have of getting a response.

Sam, this proposal would constitute a settlement package of approximately a half-a-million dollars, even if we are unable to raise the additional $40,000 in cash. You have done an excellent job on behalf of your clients, but we must ask you to clearly convey to them that Mr. Tittle is willing to make this contribution at this time, <u>but will pay no more</u>. By copy of this correspondence to counsel for the carriers, we are informing them that you plan to take this request for a proposal up with the Board within the next 48-72 hours, and that you will recommend it.

Finally, it is our understanding that you, in the hope that this matter can be resolved, will postpone the depositions of Walter E. Tittle, Sr. and Walter E. Tittle, Jr. Counsel for the insurance carriers will go forward with the depositions as scheduled commencing Tuesday, October 18, 1994, with four days being reserved for the remainder of the month of October. We will work with you in rescheduling the depositions of these individuals, if necessary.

We look forward to your response.

Very truly yours,

HUNTER, SMITH & DAVIS

William T. Wray, Jr.

WTW/sb/8151

cc: (all by facsimile)
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Walter Lee Davis, Jr., Esq.
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