

NO. 21-9605

In the

United States Court of Appeals

For the

Eighth Circuit

In re Better Future Housing Co.,

Unsecured Creditors' Committee,
Appellant

vs.

Better Future Housing Co.,
Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

RECORD ON APPEAL

Mason Walther and Caleb Smith, Directors
Harlan Fiske Stone Moot Court

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STIPULATIONS

1. This fact pattern is a work of fiction. Any and all references, similarities, or allusions to any real-life cases have no effect on the legal analysis.
2. All the facts necessary to analyze the problem have been provided in the Record. Please do not rely on any facts that are not present in the Record.
3. All references to the U.S. Bankruptcy Code, as well as all other statutes, are frozen in time at October 1, 2021.
4. The United States Court of Appeals for the Eighth Circuit will only consider cases and secondary sources decided or published before October 1, 2021.
5. All motions have been timely filed.
6. Jurisdiction and venue are proper in the United States District Court for the Southern District of Iowa and the United States Court of Appeals for the Eighth Circuit.
7. The only issues on appeal are
 - a. Does a bankruptcy judge have authority consistent with Article III of the Constitution to confirm a plan of reorganization that grants a non-consensual release of a non-debtor from state law claims asserted by a third party?
 - b. Does the U.S. Bankruptcy Code permit the confirmation of a Chapter 11 reorganization plan that includes a non-consensual third-party release, and if so, which test should the Eighth Circuit adopt to apply to the facts at hand? Under whichever test the Eighth Circuit adopts, do the facts of this case allow for such a release?
8. Except as relates to the likelihood that the reorganized company formed under the Plan might be sued again for similar torts, the merits of the underlying tort claims in this suit should not be argued. The Bankruptcy Court Judge's ruling on the likelihood of success by the tort claimants should be accepted and not argued against.

TIMELINE

Background

2014	David Hasseldorf establishes Better Future Housing Co. (“BFH”) as a Public Benefit Corporation incorporated in Delaware with headquarters in Des Moines, Iowa. BFH takes out a revolving loan from FirstBank, secured by all BFH’s assets and begins construction on a proof-of-concept building in Des Moines.
2015	Hasseldorf sells his equity stake in the business in 2015 to the socially conscious private equity firm Green Solutions Capital (“GSC”). After completing the apartment complex, BFH sells it under the influence of restrictive covenants reducing prices on the inexpensive apartments. The apartments quickly begin to fill and prices in the rental market drop significantly. GSC brings in Abigail Ormur as CEO of BFH to begin work on a new apartment complex in Aurora, IL.
2016	BFH finishes construction in Aurora, IL and sells the apartment complex to a management company under restrictive covenants. Once again the apartments fill quickly at their covenant-enforced reduced prices and the local rental market sees a steep decline in price. BFH begins work in Glendale, CA.
2017	BFH finishes construction and sells the apartment complex in Glendale to the same effect, BFH begins work in Albany, NY.
2018	BFH’s Albany construction finishes and the complex is once again sold to a local management company under a restrictive covenant that reduces prices on the budget apartments. All units quickly fill, and the Albany rental market sees price declines. BFH begins work in Amarillo, TX.
2019	Georg Bassett, working for the law firm Fjallraven LLP, begins recruiting people and companies potentially hurt by BFH’s actions to become plaintiffs in a lawsuit against BFH and David Hasseldorf for intentionally destroying their property values. The Amarillo project sells.
2020	BFH learns of Fjallraven’s attempts to stir up a lawsuit. Ormur pauses plans for BFH to build another apartment complex in Colorado.
2020	BFH retains Burrows and Gallimore P.C. (“B&G”) to begin preparing lawsuit countermeasures. B&G recommends filing for Chapter 11.

Record Begins

January 2021	BFH files for Chapter 11 in Iowa’s Southern District Bankruptcy Court. Various tort creditors file proofs of claim.
March 9, 2021	Claim Estimation Hearing [Testimony from Hasseldorf, Ormur, Muldraugh, Houseman, Homer, Carnassus]
May 4, 2021	Court approves BFH’s Disclosure Statement. BFH can now solicit votes on its Plan.
July 8, 2021	Prior to the Plan Approval Hearing, the Unsecured Creditors’ Committee files its objection.

September 10, 2021	Judge Uccello approves the Plan.
September 12, 2021	The Unsecured Creditors' Committee files a Notice of Appeal to the District Court for the Southern District of Iowa and requests a stay of the Plan.
September 14, 2021	Judge Uccello grants a stay of the Plan.
October 1, 2021	The District Court for the Southern District of Iowa certifies the case to the Eighth Circuit Court of Appeals.
November 2021	Deadline for parties to file their briefs and hold the oral argument.

PETITION FOR BANKRUPTCY RELIEF

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Southern District of Iowa
(State)

Case number (if known): 21-9605PU Chapter 11

☐ Check if this is an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy

01/21

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the casenumber (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name

Better Future Housing Co.

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN)

12 - 3456543

4. Debtor's address

Principal place of business

500 Locust St.
Number Street

Des Moines Iowa 50309
City State ZIP Code

Mailing address, if different from principal place of business

Number Street

P.O. Box

City State ZIP Code

Location of principal assets, if different from principal place of business

Des Moines County
County

Number Street

City State ZIP Code

5. Debtor's website (URL)

<https://betterfuturehousing.co>

6. Type of debtor

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
☐ Partnership (excluding LLP)
☐ Other. Specify: _____

7. Describe debtor's business

A. Check one:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
☐ Railroad (as defined in 11 U.S.C. § 101(44))
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
☒ None of the above

B. Check all that apply:

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.

1 3 3 6

8. Under which chapter of the Bankruptcy Code is the debtor filing?

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

Check one:

- ☐ Chapter 7
☐ Chapter 9
☒ Chapter 11. Check all that apply:

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, and it chooses to proceed under Subchapter V of Chapter 11. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.

☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

☒ No

☐ Yes. District _____ When _____ Case number _____
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District _____ When _____ Case number _____
MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

☒ No

☐ Yes. Debtor _____ Relationship _____

District _____ When _____
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known _____

11. Why is the case filed in this district?

Check all that apply:

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

☒ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (Check all that apply.)

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.
What is the hazard? _____

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other _____

Where is the property? _____

Number Street

City State ZIP Code

Is the property insured?

☐ No

☐ Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information

Debtor's estimation of available funds

Check one:

- ☐ Funds will be available for distribution to unsecured creditors.
☒ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

Estimated number of creditors

- | | | |
|----------------------------------|---|--|
| <input type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000 | <input type="checkbox"/> 25,001-50,000 |
| <input type="checkbox"/> 50-99 | <input type="checkbox"/> 5,001-10,000 | <input type="checkbox"/> 50,001-100,000 |
| <input type="checkbox"/> 100-199 | <input checked="" type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999 | | |

Estimated assets

- | | | |
|--|---|--|
| <input type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input checked="" type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

Estimated liabilities

- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 01 / 13 / 2021

MM / DD / YYYY

x ABIGAIL ORMUR

Signature of authorized representative of debtor

Abigail Ormur

Printed name

Title CEO, Better Future Housing Co.

18. Signature of attorney

X **ETHEL HAYTHORNE** _____

Signature of attorney for debtor

Date 01 / 13 / 2021
MM / DD / YYYY

Ethel Haythorne
Printed name

Burrows & Gallimore, P.C.
Firm name

10658 E. County Line Rd.
Number Street

Des Moines
City

(515) 867 - 2498
Contact phone

IA 50320
State ZIP Code

ethelhaythorne@bgpc.com
Email address

AT0010101
Bar number

Iowa
State

ESTIMATION HEARING TESTIMONY EXCERPTS
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In re: BETTER FUTURE HOUSING CO.

NO. 21-9605PU

Transcript of the **Claim Estimation Hearing** conducted in this matter in the Bankruptcy Court for the Southern District of Iowa, on the 9th of March, 2021.

THE HONORABLE PAULO UCCELLO, JUDGE, PRESIDING

APPEARANCES:

On Behalf of the Unsecured Creditors' Committee:

GEORG BASSETT
Fjallraven LLP
10660 E County Line Rd
Des Moines, IA, 50320

On Behalf of Better Future Housing Co.:

ETHEL HAYTHORNE
Burrows & Gallimore, P.C.
10598 E County Line Rd
Des Moines, IA 50320

Reported By:
Shim Hartley
Certified Court Reporter
U.S. Bankruptcy Court
300 U.S. Courthouse Annex

[Opening Remarks by Judge Uccello]

Good morning, everyone, and thank you for making time to be here today. This hearing is being conducted for the purposes of estimating the unliquidated contingent claims of the tort claimants against BFH Co. The estimation process enables the Court to look at claims which don't have straightforward dollar amounts yet and estimate how much of those claims should be counted for the purposes of bankruptcy processes like voting on the Plan of Reorganization. This hearing does not have the ability to establish how much BFH actually owes on any claim - it is a procedure to allow us to move forward without waiting for non-bankruptcy courts to decide that.

[Excerpt of Testimony from David Hasseldorf]

EXAMINATION BY MS. HAYTHORNE, COUNSEL FOR THE DEBTOR

Q: Good morning, Mr. Hasseldorf. Am I pronouncing that correctly?

A: Yes.

Q: My name is Ethel Haythorne of Burrows & Gallimore P.C., representing the debtor -- Better Future Housing, Co. Can you state and spell your full name for the record, please?

A: David Hasseldorf. H-A-S-S-E-L-D-O-R-F.

Q: And where do you reside?

A: Normally, in a small boat anchored off the coast of Rhode Island. For the duration of this restructuring I am staying at a hotel in Des Moines.

Q: The address?

A: 6800 Fleur Dr, Des Moines, IA 50321. Room 310.

Q: Terrific. I'd like to begin with your personal story and how you came to found BFH. What was your education background?

A: Ok. I did my undergraduate at Purdue University, and I pursued an independent course of study focused on mathematics and big data. I graduated in 2013.

Q: And how did that lead to you founding a real estate development company?

A: It was a pretty straight line. During my senior year I was trying to flex my muscles by scraping public-facing data sources on a variety of market indicators and amalgamate them into a model with real-world predictive power -

Q: And why did you want to build this model?

A: I spent a year on this because it was going to be my portfolio project to get me into the elite set of Wall Street traders who build similar models full time. These models make ultra-fast trades with massive piles of money. This project was my ticket to the show.

Q: But that's not where you ended up.

A: No. Through my research I was tapped into a group of people who cared a lot about the states of the housing and rental markets in the broader context of economic indicators. Some of them were pretty vocal about what those numbers meant for the people on the ground being affected. The story is basically that 2008 forced a lot of people out of their houses and acted as something of an inflection point for rates of homeownership and renting. A smaller percentage of real people owning homes each year, a greater percentage of people renting each year than the year before, and rent prices rising as time went on.

Q: And this made you turn your back on Wall Street?

A: Basically, yes. I had a front row seat during the moment when rising property values stopped being good for more people and started being bad for them. I saw rising property values becoming increased rent for more people and increased equity for fewer each year. I felt a responsibility to do what I could. This trend is only going to continue.

Q: And how does Better Future Housing Co. fit into this worldview?

A: With my model, I had a tool to parse apart the inputs that led to increased property values and rents in different local areas. I could make small alterations and test what would probably happen to a particular rental market with the introduction of x number of dwellings at y price point. I could see the minimum number of affordable units needed in a particular area to bring market prices tumbling down, and where to build them for maximum effect. At that point, all that was left was finding funding and staff with expertise so we could start building.

A: And how did you get that funding and staff?

A: There are a lot of people who care about doing a good thing, and even more who are willing to do some collateral good while chasing a profit. Don't forget that a model which can predict even a small part of a market is incredibly valuable. Owning

that is like being the only one able to see the future. I wrote a prospectus and had investors beating a path to my door. The social impact investing firm Green Solutions Capital gave the most attractive terms. They facilitated the creation of BFH as a public benefit corporation and invested \$100 million in exchange for 40% of the company's equity. With them on board, it was relatively simple to secure a revolving credit line from FirstBank for another \$400 million.

Q: And what did you do with that money?

A: I hired staff, opened an office for BFH, and began work on the proof-of-concept project here in Des Moines. We built the apartment complex on Court Avenue near the East Village neighborhood. My model predicted a two-tiered approach would work best. We built a complex with luxury units untethered by a restrictive covenant and budget units whose rents the covenant restricted. The luxury units would satisfy demand at the top end of the market and reduce the pool of existing demand enough that a future developer would have a hard time justifying building high-end units for a few years at least. These luxury units would also support the lower-cost units, which directly helped renters in the city and enforced a pseudo-ceiling on rental prices in the market for so long as some of the units remained on the market. This mixed-income approach also meant local

landlords were more willing to purchase the apartment complex from us - we were offering them a steal on luxury apartments in a package with unprofitable budget apartments.

Q: How does that work?

A: Think about demand and supply. My low-cost units were great value for the quality they provided because they were effectively subsidized by the luxury units. As a result, no competitor offering a price higher than what our covenant restricted the budget apartments to could compete on quality, so to move their units they had to compete on price. BFH came into Des Moines and created a housing surplus in both the luxury and budget housing sectors. Suddenly no consumer has a good reason to pay top dollar in the budget category and landlords see their units standing empty.

Q: If BFH was building apartments, why does BFH not have rental income to pay off creditors?

A: Because BFH sold the apartment complexes to finance its growth. After building the first apartment complex in Des Moines, BFH had used its line of credit with FirstBank to pay off the contractors for their work. BFH attached irrevocable restrictive covenants to the budget apartment units to guarantee they would remain affordable and included luxury apartments that landlords could make up the difference on, then sold the entire

complex wholesale in an auction process to interested apartment management companies. BFH used the cash from that auction to pay down the interest on its credit line from FirstBank and to pay a dividend of \$100 million split between GSC and me. This meant FirstBank was paid, BFH held secured debt and cash, and the equity holders made money. Then it could begin the process again.

Q: How did you sell your equity in BFH but retain ownership of the computer program critical to its operation?

A: Once the proof-of-concept project was done in Des Moines and BFH had turned a healthy profit while putting a lasting and serious dent in the Des Moines rental market, Green Solutions Capital bought out my remaining equity in the company. The one thing I refused to part with, however, was the economic modeling program I built which made the whole business plan function. That was always my property, and I kept it separate when starting BFH. GSC agreed to this, and once I stepped down as majority shareholder in 2015, the CEO would call me whenever they wanted me to scope out a new location for a project. We would negotiate these deals in a series of arms-length, one-shot transactions because I did not want to be on retainer or beholden to working with them anymore. In a few short years I had altered the course of a city's housing market and passed the

logistical baton to those more interested and capable than I was. That was when I retired to a houseboat off the coast of Rhode Island to tinker with my model and ponder the austere beauty of the Atlantic.

Q: So you were paid a finder's fee for good locations to build apartments?

A: So much more than that, but yes. Without me and my program, BFH would not know where to build so that it can both make a profit and help renters in overheated markets, the only two goals in its charter. I am integral to their operations, and the amount of money they pay to use my site selection algorithm reflects that. My model also indicates how much they should charge for the luxury and budget apartments in each location to correctly affect the local rental market.

Q: Why is BFH in Chapter 11?

A: Because the business worked too well and we made some powerful people very angry. Landlords in Iowa, Illinois, California, and New York all lost a lot of money when their rental markets cooled off as a result of our actions, and they think they can sue their competition out of existence and maybe get some money back in the process. We poked the behemoths of the national residential market, and now they are out for blood.

Q: Does BFH have the money to pay for the lawsuits?

A: That's a question for them. I don't know for sure, but I would bet not. The whole point of the business is that it creates widespread structural change in the local rental market, effects much bigger than the revenue one firm in that space could earn. These landlords' losses are the financial effect of a reallocation of market power from the supply side of the market to the demand side, something we can only facilitate in certain markets and at certain times. The business was meant to leverage those shifting currents of market forces, to sow the wind and let the entire sector reap the whirlwind.

Q: Do you think their claims have merit?

A: I'm not a lawyer, but it seems like no. We did everything legally, we just happened to be in the right place at the right time, a butterfly setting a tornado in motion. We weren't trying to single out or hurt any landlord in particular, and nothing we did would have been possible without them creating supply squeezes and overcharging in a messed up, collusive manner. They each bear just as much responsibility for building a broken rental market as we do for abruptly correcting it. And at the end of the day, when has it been illegal to be better at business than a competitor? Our product is better than theirs and people like it more, so nobody wants to pay for the

accommodations they offer as long as our budget apartments have at least one vacancy.

Q: In your opinion, is BFH worth more as a going concern than it is in liquidation?

A: Absolutely. You liquidate, you get to sell some office chairs and whatever cash the company has on hand. I'd bet it all goes to FirstBank anyway. Other unaffiliated companies bought the actual apartment buildings as soon as we finished construction. Back when I left the company, the end of the business cycle saw a pile of cash from selling an apartment complex go to paying down the debt with FirstBank and cutting a dividend check to the equity owners. Considering the revolving line of credit with FirstBank is used to pay me my finder's fee, to pay staff and executives and contractors and the office lease, there's probably nothing left after paying their secured claim. The credit line is big, and BFH was never supposed to hoard cash, so it would be strange if we had a pile of cash large enough to cover the entire credit line at any given time. BFH spent that money on improving the lives of renters through high quality housing for low prices, and the remainder went to paying high salaries and dividends to everyone involved. That's part of the reason I was able to partially retire at 25. Once the Des Moines complex proved we could finish a construction round cash

positive before dividends, the game became one of paying dividends as soon as possible to increase net present value while preserving enough cash and credit to build the next complex.

Q: So in liquidation, BFH is worth almost nothing. Yet on paper it looks like a reorganized BFH is worth millions. How is this true?

A: The answer is the people and the assets that are held in other companies. BFH is where it all comes together, but without my program or the know-how from people in GSC or the hard work of our local contractors or even the financial leverage from FirstBank, there is no value. If the landlords had never sued BFH and me, the company would have kept on turning profits for all those involved and paying off its interest with FirstBank for years to come. That's why I think these lawsuits are about our competitors trying to force BFH into liquidation rather than allow it to continue as a company that gave them a bloody nose. This company produces great value for its stakeholders and society at large by continuing to operate and fight extortionate rental markets. Remember that we cannot do this without the right market conditions - if consumers already have significant market power in a city and landlords are competing on price, our intervention can't cause much of a course correction at all.

Q: You said these same landlords that are suing BFH are suing you personally as well. What effect do you expect their suits against you personally will have on this reorganization?

A: If I remain subject to their lawsuits after this bankruptcy, I will cease to provide building site information to BFH. Those lawsuits will ruin me financially and I will need a new source of income to rebuild my lifestyle, so I will likely have to leverage my technology solely for my personal financial benefit instead of being free to use it for the good of society. That would be a sad development, and I hope I will not be forced to withdraw my support of this public good and destroy so much value for other creditors in the process. It would be giving a few of BFH's large competitors exactly what they want at great cost to society at large and to the other creditors who actually want to see the value of the firm retained.

Q: And you think the average mom-and-pop tort claimant in this case is better off if you are released from their tort claims in exchange for a contribution to the plan?

A: I do. BFH's large competitors want to force liquidation and end the company, but the many smaller landlords just want to be made whole for a perceived wrong. My net worth is roughly \$250 million in liquid assets. That is enough to finance a long and hard fight if they come after me personally, but only enough to

double their potential recovery at the cost of years of litigation and accompanying expense. And if those judgments come, I'll declare personal bankruptcy and extend the process even longer and at greater expense for the small landlords who were dragged into this suit by BFH's competitors. For a family that has \$50,000 in potential claims against me, the Plan means they get a quick \$10,000 with potential for more depending on the BFH auction. If they come after me personally their potential maximum return doubles to \$20,000 but they will spend more than that just trying to recover any money at all.

Q: You have claims pending against you in your personal capacity as well for your role in starting and running BFH in the beginning. You have been vocal about wanting a release from those claims against you and have told BFH that you would cease providing it access to your computer program if the claims against you are not released. Why?

A: BFH is not the most lucrative use of my talents or my computer program. I started the company with the hope of putting the public good ahead of personal profits. I still made a tidy sum of money, but nowhere near what I could have by selling or licensing the program in other markets. As a result of my sacrifice, I don't have nearly enough money to pay off the claims against me - I will have to generate a tremendous amount

of money very quickly with that program, or else declare bankruptcy and be stripped of the program anyway. In either case, I cannot keep providing access to BFH without a release of those claims.

Q: Thank you, no further questions.

EXAMINATION BY MR. BASSETT, COUNSEL FOR THE CREDITORS' COMMITTEE

Q: My name is Georg Bassett of Fjallraven LLP. I represent the official committee charged with the fiduciary duty of protecting the interests of unsecured creditors in the Chapter 11 restructuring of Better Future Housing Co. If you are really so essential to the operation of BFH, why did GSC let you take the economic modeling program with you when you left?

A: First, because they trust me. I know what I'm good at, and it isn't running a multi-million-dollar company. Its mathematics, its econometrics, and I'm only getting better at it with time. GSC knows that I'd help if they asked because I'm a good person. Second, they literally couldn't stop me. The modeling program is mine, it isn't BFH's. I made it, I kept it, I allowed them to use it when I was the majority shareholder, but I didn't have to.

Q: If BFH is worthless without your program, why did GSC buy you out at all? Isn't that a really risky proposition?

A: Clearly you think trust doesn't matter once there's money on the table. But even if you're right, the cyclical nature of BFH's business makes our transactions low risk. At the time in the business cycle when they commission me to find a new location, BFH is light on assets and debt. They've built the prior apartment complex and sold it off to some local apartment manager under restrictive covenants. If I ever refuse to give them another location, they can try to rethink their business strategy or wind down the business. In either case, they lose the potential profits from another round of development with my proven model, but they aren't suddenly unable to pay their debts. If anything, the only reason they are in bankruptcy now is that my model worked too well and your angry bunch of landlords got upset by losing at their own game.

Q: And you stand by the statement that the purpose of BFH and the purpose for which you founded it is to willfully destroy the property of landlords?

MS. HAYTHORNE: Objection, form.

JUDGE UCCELLO: Sustained.

Q: Fine. For what purpose did you found BFH?

A: I founded BFH to give some relief to tenants getting crushed by falling home ownership, rising property values, and rising rents. I founded BFH to create structural market change to help the vulnerable.

Q: Does BFH still act according to your original intent?

A: I don't know. BFH acts according to the dictates of its charter and the decisions of its Board of Directors and Executives. Ask them. I don't run the company anymore; I just provide the modeling now.

Q: Thank you. I have no further questions.

[Excerpt of Testimony from Abigail Ormur]

EXAMINATION BY MS. HAYTHORNE, COUNSEL FOR THE DEBTOR

Q: Good morning, Ms. Ormur. Am I pronouncing that correctly?

A: Yes.

Q: My name is Ethel Haythorne of Burrows & Gallimore P.C., representing the debtor -- Better Future Housing, Co. Can you state and spell your full name for the record, please?

A: Abigail Ormur. That's spelled O-R-M-U-R.

Q: And where do you reside?

A: Here, in Des Moines. I live at 765 Foster Drive, Des Moines, IA 50312.

Q: Alright, let's begin with your work history. Where did you work before becoming the CEO of Better Future Housing Co. in 2015?

A: I had twenty-five years of experience in construction management before joining BFH. I spent the last 10 at Sheets and Block, overseeing construction of apartments in Illinois.

Q: And what made you decide to transition to BFH this far into your career?

A: Primarily it was a lack of opportunities for growth. At Sheets and Block I was never going to be allowed to run the

show. It is a closely held firm and the families it is named for will never let an outsider lead the company. At some point the only way up was out, and BFH gave me that opportunity. I had the skills and experience, and they were eyeing a project in Aurora, Illinois while we were in talks. I thought that project would give me a solid transition and allow me to leverage my professional connections in the area.

Q: In this case, some unsecured creditors have sought to portray BFH in a predatory light. To set the record straight, what exactly is BFH's mission?

A: We build apartments, then sell the apartment complexes to one of the various apartment management companies in the state where we built the complex.

Q: And why does BFH do that?

A: Because we have the skills, connections, and capital to do so. And because its profitable.

Q: For whom does BFH create value?

A: A lot of people. First, we provide value to GSC, who holds the equity. After bankruptcy, we will continue to provide value to whoever holds that equity because the fundamental business model is sound. Second, we provide value to consumers. Our primary consumers are the local property management companies to

whom we provide attractive investments that are socially conscious and always in demand because of their high quality at all price points. Our secondary consumers are the people who actually live in both the luxury and budget apartment units. Our business model only works because we provide a best-in-class living space at both these price points. Our luxury units fill because they are luxurious. Our budget units fill because they offer compelling, high-quality living spaces at reasonable prices - a combination so rare that we are being sued out of existence for daring to offer it. The contractors with whom we work to create these spaces also benefit. They get to work with a proven and experienced partner they can trust, one with a track record of success. Finally, we create value for our employees: they are paid a living wage and get to work in a place that they know values their contributions as they make the world a tangibly better place.

Q: And what will happen to all this value creation if reorganization is impossible and BFH has to be liquidated instead?

A: It all disappears. The apartments that have already been built will physically remain but will not have a powerful and interested party willing to monitor local compliance with the restrictive covenants involved in those transactions. In

addition, no more apartments will be built, nor any sold. There will be no new construction contracts or sales, no more compelling spaces or high-paying and fulfilling jobs. More importantly, no one will be able to pick up the pieces and try again: the liquidation of BFH would serve as a refutation of the business model and a warning, proof that any one of the old monsters slumbering in the depths of the national rental market can destroy competitors, changemakers, or disruptors with a single snap of its abyssal maw. This behavior is what the phrase "chilling effect" was meant to describe.

Q: Colorful. And if David Hasseldorf refuses to allow BFH access to his modeling software to find the right locations to build, how does that affect BFH's chances of reorganization?

A: It annihilates them. That program is the key to the successful operation of the business in each cycle. We already have one planned location that we halted, and we could theoretically go forward developing that. But why would we? It would afford the business only one year of operation, after which it would fold without any identified prospects for new construction. Better to liquidate and auction that proprietary information as something valuable to appease the secured creditor than to struggle on for only a year and then wind down anyway.

Q: And is it your understanding that David Hasseldorf will deny BFH the future use of his software if the landlord lawsuits against him in his personal capacity are allowed proceed?

A: Yes. That is what he has communicated to us.

Q: Thank you for your time. I have no further questions.

EXAMINATION BY MR. BASSETT, COUNSEL FOR THE CREDITORS' COMMITTEE

Q: My name is Georg Bassett of Fjallraven LLP. I represent the official committee charged with the fiduciary duty of protecting the interests of unsecured creditors in the Chapter 11 restructuring of Better Future Housing Co. How are you doing today?

A: Quite well, thank you.

Q: Is BFH motivated by profitability?

A: Yes, and we've been quite successful at making profits for our shareholders.

Q: Is profitability all that you're concerned with?

A: Yes.

Q: What if I told you that the firm's founder, David Hasseldorf, had a different opinion?

A: That's his right.

Q: What if I told you that he believes he created the firm you now run for the express purpose of destroying surrounding property values and destabilizing rental markets? Does that ring a bell?

A: That is familiar.

Q: And what do you have to say to that?

A: I would say the motives of a man who walked away from the firm five years ago have very little to do with the operational realities here and now. BFH exists to make money for GSC because they hold the equity in the firm. Our charter requires we produce value for customers along the way. That is what all successful businesses do.

Q: And the reason you use Hasseldorf's proprietary econometric model to build apartment complexes only in places that destabilize the local rental market?

A: The primary factor we take into account when deciding where to build a new project is whether we can fill apartments and price it to turn a profit.

Q: Why does BFH care about filling rooms when you sell the empty buildings to local companies as soon as you finish construction?

A: Because we negotiate with them at arm's length. There are no sweetheart deals. If we build in a place where the units won't fill at acceptable prices or can't fill from lack of demand, we can't negotiate effectively and transparently for a price high enough to make construction worth it. We succeed because we have a reputation for doing right by our counterparties wherever we go, and we can't pass them losses without it coming back to bite us in the future.

Q: Why did GSC structure the business like this? Wouldn't a normal business just build the apartments and then rent them out? Why sell the buildings for cash instead of just waiting for rental income?

A: You would have to ask GSC directly. But from BFH's perspective, selling the apartments allows us to focus on our strengths. We are good at building apartments, not managing them. It also gives the company cash in hand to reset quickly for the next round of construction.

Q: How many apartment complexes have you sold to local apartment managers?

A: Five. The first was in Des Moines in 2015, before I arrived. The second was in Aurora, IL - sold in 2016. The third was Glendale, CA which sold in 2017. Fourth was Albany, NY in 2018. Fifth was Amarillo, TX which sold in 2019.

Q: That seems like a consistent pace. Why did you stop construction?

A: You know why. We learned in February 2020 that your law firm was visiting each of our sites and canvassing for tort claimants to sue us. We didn't want this lawsuit to catch us in the middle of construction and make a mess of everything. We got our house in order and paused our plans to build another apartment complex.

Q: Did you stop because you didn't want to continue increasing your legal liability?

A: I'm not a lawyer.

Q: But you were advised by lawyers, surely.

A: Our decision not to begin construction again isn't an admission we were doing something wrong. We weren't. It was a recognition that if you sued us it was going to be at the most inconvenient time you could manage, and we didn't want to give you the opportunity.

Q: The worst possible time how?

A: If you forced us into Chapter 11 bankruptcy during construction it would hurt a lot of contractors and regular people we do work with. A lot of people would be forced to take pennies on the dollar, and no contractors in the future would

ever trust us again. The reorganized business would fail because nobody would work with us out of fear of you or someone like you pulling the same trick again.

Q: And why did BFH go into bankruptcy at all in response to the lawsuits trying to reclaim the value your firm destroyed? If you believed you had done no wrong, why run away and hide behind a bankruptcy?

A: Because their claims are several orders of magnitude beyond what we can afford to pay. Five billion dollars was the last I saw. With a b. That litigation is going to drag on for years and cost a lot of money. And even if we win 95% of the lawsuits the remaining verdicts would be enough to put us under anyway. We don't have a \$250 million litigation insurance policy and we can't just pay that without defaulting on other debts. And that's one of the best-case scenarios. Better to have those claims against the company recognized and wiped out in bankruptcy, where each of you gets pennies on the dollar after all your years of litigation and the newly reorganized company walks away free and clear of those liabilities. BFH is a profitable company and will continue making money under new ownership, and in the meantime most of your lawsuits will run out of steam as judges realize what you are trying to do.

Q: And what is that?

A: Put a more successful competitor out of business with frivolous litigation. You don't have a legal leg to stand on, but the risk that you get even a few judgments in your favor is just too high. On top of that, you refused to seriously negotiate a reasonable non-bankruptcy solution. So BFH declared bankruptcy and under a plan of reorganization the business can go back to making money. You will have failed at destroying a competitor that will soon grow to rival the rental empires of your backers. And if you try to sue the reorganized company five years from now, we'll point back to this moment where you either dropped most of your lawsuits as soon as we reorganized successfully, or you lost almost all your cases eventually. The second time around it will be even more clear that your lawsuits should be thrown out immediately and we won't even have to reorganize to deal with you then.

Q: That's quite a theory. If reorganization involves an entity other than GSC taking ownership of BFH, then why does GSC care what happens after that?

A: You'd have to ask them. All I can say is that BFH creates value for a lot of people, and that includes its business partners. So long as BFH is building apartments, it makes sense to rely on GSC's talent and organizational skills, which GSC brought to the table as part of its ownership interest but would

be happy to provide to the next owner for a fee. Ownership of BFH may change, but the fundamental business plan remains viable and relevant skills will be in demand.

Q: Thank you. This has been enlightening. I have no further questions.

[Excerpt of Testimony by Elizabeth Muldraugh]

EXAMINATION BY MS. HAYTHORNE, COUNSEL FOR THE DEBTOR

Q: Good afternoon, Ms. Muldraugh. Am I pronouncing that correctly?

A: Yes.

Q: My name is Ethel Haythorne of Burrows & Gallimore P.C., representing the debtor -- Better Future Housing, Co. Can you state and spell your full name for the record, please?

A: Elizabeth Muldraugh. M-U-L-D-R-A-U-G-H.

Q: And where do you reside?

A: 116 W 435th St, New York, NY 10027.

Q: Far from home. Thank you for being here.

Q: Ok then, let's get to the meat of the matter. Where do you work?

A: Green Solutions Capital.

Q: And what is your role?

A: I am the managing partner.

Q: How long have you held that role?

A: Ten years. I spearheaded the fund's creation and have managed it ever since.

Q: And what does Green Solutions Capital do?

A: We gather money from sophisticated investors who want to improve the world, then we leverage those funds and our business acumen to incubate businesses that can change the world.

Q: What returns do your investors expect?

A: They expect us to keep pace with the market at large. Sometimes we beat the market, sometimes we fall short. On balance, we have a strong history of at least matching the market while providing a compelling social dividend.

Q: Does the fund encourage any of its portfolio companies to pursue what you call a social dividend to the detriment of maximizing shareholder profits?

A: We do not encourage our companies to sacrifice profitability for impact, nor impact for profitability. We try to balance the two, and our investors have by and large appreciated this measured approach.

Q: Despite the fact that BFH was generally losing money, did it represent an investment opportunity that generally balanced these two goals?

A: Yes, we believed it was.

Q: Was the situation, where BFH was consistently losing money, sustainable?

A: It was sustainable in any of a few different scenarios. In the first, the prices at which BFH sold apartment complexes increased either as a result of macroeconomic factors or because the market recognized that they transitioned from unproven investments for local landlords to surefire socially conscious profit-generating assets. In the second, input prices could fall either as a result of market forces or from input providers such as GSCM or Hasseldorf or local contractors in recognition that their current profit margins were unsustainable for BFH but that reduced profits were better than none. Finally, there was a potential world where BFH never turned a profit but brought on more investment capital as the smart money realized how valuable a socially conscious housing creation company could be if scaled up to take advantage of larger markets than the 200,000 person cities BFH had the scope to impact at its current size.

Q: So you are saying that short term profitability is a poor indicator of BFH's true financial status or value?

A: Yes, but don't just take my word for it. GSC valued BFH at \$250 million when it bought out Hasseldorf's 60% stake for \$150 million.

Q: Do you think this potential for massive growth in the future is related to the wave of tort lawsuits brought against the company at this point in its lifespan?

A: I couldn't possibly say.

Q: Those are all the questions I have for you. Thank you.

EXAMINATION BY MR. BASSETT, COUNSEL FOR THE CREDITORS' COMMITTEE

Q: My name is Georg Bassett of Fjallraven LLP. I represent the official committee charged with the fiduciary duty of protecting the interests of unsecured creditors in the Chapter 11 restructuring of Better Future Housing Co. Thank you for coming here to answer our questions today.

A: You're quite welcome.

Q: How did your company become involved with BFH?

A: We have staff analysts whose job is primarily to stay vigilant for investment opportunities that align with our priorities. Our housing analyst started hearing intel through Twitter about a guy who promised that with several hundred thousand dollars he could improve the housing market for an entire city. The prospectus was on my desk within a few hours, and a few days later Hasseldorf was in my office. He gave a demonstration of the program and we bought in for 40% initially and helped him set up the business.

Q: Helped him set up the business how?

A: One of GSC's subsidiaries is GSC Management, which contracts to provide centralized management functions for various other companies. As part of our buy-in to BFH we included subsidized access to GSCM resources. GSCM gave BFH the expertise to incorporate, receive a loan from FirstBank, coordinate local contractors, and run the process of building the Iowa apartment complex.

Q: When did you stop providing BFH with subsidized access to GSCM's expertise?

A: After the Iowa complex was an effective proof of concept, GSC bought out Hasseldorf's stake in the business and ceased providing subsidized access. GSCM instead charged their market rates for the as-needed cyclical use BFH made of them in the early and middle stages of each apartment complex development project thereafter.

Q: Was the price charged to BFH reasonably equivalent to the value provided?

A: Yes. GSCM charged the same amount to BFH each year from 2015-2019. The amount charged did not change in contemplation of BFH's impending bankruptcy. More to the point, the prices were negotiated at arm's length between BFH and GSCM and approved by an independent and disinterested board of directors instituted by GSC at BFH to firewall conflicts of interest. Finally, you

can tell that reasonable value was provided because the apartment complexes were a success. They were built and sold and became best-in-market accommodations in each city.

Q: If the price and value given were reasonably equivalent, why did BFH lose \$30 million each year from 2015 to 2019?

A: Many companies lose money in their first few years. BFH proved in Iowa that it could generate profitable complexes when it was subsidized, then operated for the next five years losing a small amount of money while accomplishing a social good and never being at risk of defaulting on any commercial obligations.

Q: Then why is it in bankruptcy?

A: Because suddenly large commercial landlords decided to throw five billion dollars in claims at state court systems to see what would stick. BFH's relationship with all commercial creditors was excellent.

Q: If BFH had excellent relationships with its trade creditors and has not built any apartments since early 2019, why does it still have trade creditors with outstanding claims in Class 2?

A: Some of those trade creditors supply BFH with goods and services outside the normal construction cycle--these are things like office rent at the various YouWork locations where BFH's permanent staff work from across the country. Others are

contract counterparties who did not submit their invoices until after January 2020. At that point even though we paid them promptly the bankruptcy estate clawed the money back to ensure we were not giving preferential treatment and paying off certain claims right before declaring bankruptcy.

[Excerpt of Testimony from Lilly Homer]

EXAMINATION BY MR. BASSETT, COUNSEL FOR THE CREDITORS' COMMITTEE

Q: Good morning, Ms. Homer. My name is Georg Bassett of Fjallraven LLP. I represent the official committee charged with the fiduciary duty of protecting the interests of unsecured creditors in the Chapter 11 restructuring of Better Future Housing Co. Thank you for coming here to answer our questions today. Can you state and spell your full name for the record, please?

A: Lily Homer, that's L-i-l-y H-o-m-e-r.

Q: And where do you reside?

A: In Des Moines, Iowa.

Q: Could you briefly tell us why you got involved in this lawsuit?

A: I had a huge portion of my savings get wiped out as housing prices in our area fell thanks to BFH. I have owned a home for 30 years now, and my husband and I have always worked. 15 years ago we started thinking about saving for our kids' college. We have two kids. So we bought a duplex in our town as a rental property, thinking we would use the rental payments to cover the mortgage, repairs, and taxes, and we'd be able to sell the

property as our kids got to college in order to pay for their tuition. College is getting so expensive these days.

Q: So you say you bought one house?

A: Yes, just one, and we kept the rent reasonable and provided very decent apartments for our tenants. We've had one family there for almost the whole time we've owned the house, and the other apartment has seen tenants coming and going, but our tenants have always been satisfied with our properties.

Q: And so now your savings are gone, the savings you were hoping to use for college?

A: We have some savings, and it's not like we can't sell the property for anything, but the property is now worth \$80,000 less than what we bought it for, never mind inflation. So I think our kids, and maybe our family, will have to take out some significant loans to get them through college.

Q: Some people have tried to paint this lawsuit as benefiting large, wealthy corporations who don't care about tenants, but you have said you only own one property, so would you describe yourself as a large, wealthy corporation?

A: No, not at all. We were just trying to provide for our family, working hard for modest savings, just trying to help our kids have a better life.

Q: And are you unique in this lawsuit, or are there a lot of small-savers whose finances have been devastated by the actions of BFH?

A: A lot. I'm not sure exactly how many, but at least ten thousand. BFH hurt a lot of people.

Q: And do you think BFH is doing its best to make amends for those harms?

A: Not at all, one of the things that makes me so mad is it feels like they're trying to skate away untouched. They've tried to make it sound like landlords are these evil people exploiting their tenants, but like we've said, we've always had good relationships with our renters. We don't fit this stereotype they've painted of us. They're going to leave us regular hard-working families behind and maybe go make some more profits. It really doesn't feel like they care.

Q: Well, then, thank you, I don't have any further questions.

A: Thank you for your time.

EXAMINATION BY MS. HAYTHORNE, COUNSEL FOR THE DEBTOR

Q: Ms. Homer, thank you for coming in today. What are you seeking out of this settlement, exactly?

A: I want our family to get back what we lost, all \$80,000. It seems like this company, from what I've been told, came in to destroy housing value, and that hurt small owners like us, people who live in and have invested in this community.

Q: So, as I understand it, you'd like to see BFH give you lost value. Do you care if BFH is liquidated or if it is reorganized?

A: No, I don't care, we just want what is fair. We want what we're owed.

Q: So if you are eligible for more money under a reorganized company, is that what you'd prefer, that the company be reorganized rather than eliminated?

A: If that's true, then yes.

Q: Yet the head of the Committee for those of you who are unsecured creditors is seeking the liquidation of BFH. How did you come to get involved with MogulCo?

A: It was kind of funny. We weren't looking for any lawsuits or anything, but we got a flyer.

Q: Just got a flyer on your door-step?

A: Yes, all of our neighbors did. Most of the folks we know don't own rental properties, but everyone in our neighborhood, perhaps everyone in the surrounding few towns, seems to have gotten these flyers from Fjallraven, the law firm, asking us if we had been hurt by falling home prices and falling rental values.

Q: And you were hurt by both falling home prices and rental values?

A: Not so much the falling rental prices. We had leases that were a couple years still in length, and like we said, we worked hard to try and strike a fair deal with our tenants. We weren't trying to squeeze them, we wanted to cover our bills while building equity in the homes, we weren't looking to squeeze every dollar we could out of those who can't afford to own a home. It's just that now the sale of homes for use as rentals has dropped because other potential owners know they can't squeeze out the profits they used to be able to before BFH came to town.

Q: Might you say, then, that you had a philosophy as landlords which was similar to the philosophy of BFH, trying to provide

affordable housing while getting at least a minimal economic profit for yourselves?

A: I don't know what BFH tries to do exactly, I know they try and describe themselves as helping people, but I can only say it has hurt us. I don't have anything against them personally, I just want to be made whole.

Q: So if I could return to my earlier line of questioning, you received advertisements from Fjallraven LLP, asking if your home or rental values had been hit recently, an issue for which they fault our clients, and they asked you to join a lawsuit?

A: Yes, that's right. They also did some other advertising, I think, I probably saw at least one ad on Facebook, and heard a couple of radio ads. Seemed like they were pretty eager to get the word out to smaller landlords like us.

Q: When you joined, what did Fjallraven say their goal was in the lawsuit?

A: To get damages for us and the other homeowners who had been hurt by BFH's actions, which they said were malicious and intentional.

Q: Do you agree that their actions, those of BFH, were malicious and intentional, or like I asked earlier, is it possible their motivations were actually to help others?

A: Like I said, I don't really know their motives, but I don't harbor anything against them. We were offered to join a case to try and get some of our money back that we lost because our property isn't worth what it used to be, and we joined. Fjallraven told us things about BFH, but we really don't care, we just want compensation.

Q: MogulCo has already made it known that it opposes any plan to reorganize the company - even though that would likely get you more money than if it was liquidated. Do you think that you and MogulCo represented by Fjallraven, have similar interests?

A: This stuff is kind of out of my league, but the lawyers tell us that this deal limits the amount of money we can get, and that if we're permitted to sue Mr. Hasseldorf, there will be more money available to compensate victims, so that's why we're opposing this deal.

Q: Are you aware that such litigation is entirely speculative, could take years and not be wrapped up until after your kids are in college and you've already started taking out loans, and that

if the lawsuits fail you'll end up with nothing instead of getting the money we're promising you in this deal?

A: That's what you all have argued, but again, our lawyers assure us our chances of getting full recovery are strong if we pursue the lawsuit. The amount you're offering, the low percentage of claims, is just so low, we're not sure it's really worth it.

Q: Liquidating the company, which is likely if this deal with Mr. Hasseldorf isn't accepted, would be beneficial to MogulCo because they would no longer have to compete with BFH's cheaper housing, but it wouldn't benefit you, is that correct?

A: Maybe. Not my main concern here. I really don't care what happens in other cities. I think I can see what you're trying to do. I just want the compensation that our family is owed, that we worked so hard for over these years.

Q: Thank you, I don't have any further questions.

[Excerpt of Testimony from Norm Houseman]

EXAMINATION BY ETHEL HAYTHORNE, COUNSEL FOR DEBTOR

Q: Good morning, Mr. Houseman. Am I pronouncing that correctly?

A: Yes.

Q: My name is Ethel Haythorne of Burrows and Gallimore, P.C. - I represent the Debtor in this proceeding, Better Future Housing, Co. Can you state and spell your full name for the record, please?

A: Norm Houseman, that's N-O-R-M H-O-U-S-E-M-A-N

Q: And where do you reside?

A: In Glendale, CA.

Q: Why did you get involved as a tort claimant in this lawsuit?

A: Because of lost income from my rental property, and eventually having to sell my house for less than what it was worth.

Q: Could you tell us more about the rental property and why you bought it? I presume it was not your primary residence?

A: Correct. I bought it back in 2010. I work as an assistant manager at a local supermarket, and thankfully I didn't lose my job in the financial crisis. But I began to think about saving for retirement. Houses were pretty cheap after the housing bubble burst, so I picked up a property, which still had some tenants in it, just thinking it was a good investment vehicle as I saved for retirement.

Q: Having just witnessed the housing bubble burst, I'm sure you were well aware that there were risks in buying that home, that the value might not stay stable over the years?

A: Sure, I was aware. I mean, the fellow I bought it from definitely lost out, but he didn't have the patience or capital to keep holding onto it, he had held it for a while and needed the cash now, so I was able to get a pretty good deal on it.

Q: And you were able to continually rent this property out since the time you purchased it?

A: Yes, pretty much. I put work into the house over the years, have had several different tenants, but I like to think we got along pretty well. Overall, I came out a little ahead on the mortgage and expenses, so I figured it was a great way to save for retirement. I even felt good about helping to provide housing, since most of my tenants were low-income. I know it seems like Mr. Hasseldorf has attacked real estate folks and landlords during these proceedings as somehow gouging the poor, but I always thought the price at which I rented out the home was fair and I had fine relations with the folks who lived there.

Q: So what happened after BFH built housing in your area?

A: Within a week of their new housing putting out solicitations for new tenants, the tenants I had had for four years told me they'd be moving out. I wasn't worried at first. They weren't

the first to move out. But pretty soon I saw that the housing market had changed dramatically. I kept looking and looking for tenants, even lowering the rent several times, by hundreds per month, and nothing gave. The property was decent, but not as fixed up as the new housing that BFH offered, and it was impossible to beat their prices.

Q: And so you decided to sell?

A: Yes, I decided to cut my losses. I didn't lose money on the sale, like some other folks did, since I bought it during a down housing market. But it was worth quite a bit less than I had expected to eventually sell it for - certainly worth less than it was the year before BFH came to town. What's more, I lost that rental income. I was building good equity, every year, and now that little extra income and the equity I kept building are gone.

A: Has it put you in a pretty hard situation?

Q: I'll be all right. It didn't devastate me or anything. And I can't blame BFH. Business is business, and they came in with cheap housing that folks wanted. That was their right. I just, one year my retirement situation looked great, and then it took a hit. I'm sure I'll recover. It's just a bit of a surprise and a sting, that's all.

Q: So what are you seeking out of this lawsuit?

A: I just want whatever I can get out of settlement. I don't know if it will be much. I'm pretty sure I won't recoup the full amount I lost, the full income I could have had, but I just want to get some of it back and move on.

Q: And if you had to choose between access to money now in a reorganization plan or retaining your right to sue Mr. Hasseldorf, which would you lean towards?

A: I'd give up my rights for cash. I'm only involved because I want to recoup some of my losses, maybe move onto some other types of investments. Not gonna try housing again. Anyway, I want a sure thing. It seems that continued lawsuits might get me more money, but it'll take a while, it'll be a pain, and I might come out empty. I don't want to speculate too much. It sounds like you are describing something like me selling my rights to sue, which seems like the safest way to come away with something.

Q: So you favor a reorganization if it gets you more money, rather than liquidating the company?

A: Yes, exactly. It seemed to me that this was the best chance to get some money, and the fact that it is fast and easy, and we can get it now, it was appealing to me. I don't care whether BFH liquidates or not, I just want to take some settlement and move on.

Q: Are you at all concerned about the motivations of some of the other tort claimants who might vote against the plan?

A: Yes. I feel like MogulCo has been whipping people up to oppose any plan of reorganization. They seem to be in some sort of epic competition with BFH, on a national scale. That's over my head, though, and I don't want to get involved.

Q: Do you think MogulCo is adequately representing your interests?

A: No, I think we've got different interests. I want some surefire reorganization with terms that get me something of what I lost and a little peace-of-mind that I got something and this is over, but I think MogulCo wants to take down BFH. Maybe it's personal for them, maybe it's business. I don't know. But I don't think they're representing the interests of some of us small landlords who want some compensation and we want it sooner rather than later. I even think that some of the other small landlords, actually, might be taking this thing personal, like they're really angry at BFH. And some of them I think have just been duped by MogulCo.

Q: Are you concerned that MogulCo.'s claims against BFH seem to be so much larger than yours? If you are grouped in the same class to vote on the plan confirmation, you wouldn't be able to accept a plan without their voting bloc.

A: I mean, that's not ideal. Nothing I can do about it though.

Q: One final set of questions, Mr. Houseman, I just want to ask how you got involved?

A: The manager of the store I work at brought it to my attention. I had been complaining to her about the drop in the rental market, and about how I was going to have to sell my house and couldn't find a tenant. So one day I came in and she handed me one of those little local papers that we have in the store, and she had looked through it and seen an ad by Fjallraven, she said I should look into it, given my complaints.

Q: And as you understand it you are just one of thousands of claimants who were hurt by BFH?

A: Tens of thousands.

Q: So it seemed that MogulCo was canvassing pretty far and wide for clients, is that right?

A: Yes I guess it's just part of my business, but talking to folks as I got involved it sounded like they had put out advertisements in a lot of different places, even dropping off flyers. They were trying to find everyone they could to join their lawsuit. I don't think they really cared about us. At first I assumed like most lawyers they were recruiting because they wanted a hefty settlement, which they would take part of. I later started to suspect they wanted to take down BFH. I didn't support that, but it was the only lawsuit I was aware of, so I stuck with it.

Q: Thank you for your time, Mr. Houseman, I have no further questions.

EXAMINATION BY MR. BASSETT, COUNSEL FOR THE CREDITORS' COMMITTEE

Q: My name is Georg Bassett of Fjallraven LLP. I represent the official committee charged with the fiduciary duty of protecting the interests of unsecured creditors in the Chapter 11 restructuring of Better Future Housing Co. Do you believe you were doing anything bad by renting out your house?

A: I mean, obviously not.

Q: Were you charging above-market prices?

A: No.

Q: Were you providing low quality housing?

A: No, I'm proud of the services I provided.

Q: So you were just a normal small-business owner trying to make your way in America?

A: Sure, I guess.

Q: And then a competitor moved in with more money than you could ever make and purposely messed with the market to take away your tenants and prevent you from earning a living?

A: I mean, I was still earning a living - just not from renting out housing anymore. But yeah, I got squeezed out of the market.

Q: And if I told you that the company that destroyed your ability to earn money did that not because it was trying to turn

a profit, but just because it wanted to hurt you, would that change your opinion of them?

A: It doesn't feel great. Is that really true?

Q: That's part of what we will find out in the courts. And now the company that squeezed you out of the market is here saying that they are actually the ones being pushed out because you asked for compensation - does that seem wrong to you?

A: It does have a poetic streak.

Q: Thank you. I have no more questions.

[Excerpt of Testimony from Alexis Carnassus]

EXAMINATION BY MR. BASSETT, COUNSEL FOR THE CREDITORS' COMMITTEE

Q: Good morning, Ms. Carnassus. Am I pronouncing that correctly?

A: Yes

Q: My name is Georg Bassett of Fjallraven LLP. I represent the official committee charged with the fiduciary duty of protecting the interests of unsecured creditors in the Chapter 11 restructuring of Better Future Housing Co. Can you state and spell your full name for the record, please?

A: My name is Alexis Carnassus. Spelled C-A-R-N-A-S-S-U-S.

Q: And where do you reside?

A: I hail from Bodrum, Turkey, though I've not been home in some time. I've been staying in New York for the past few years.

Q: Could you describe your corporation, MogulCo?

A: We're a national corporation, dealing primarily in real estate, involved in both building and operating and maintaining multi-unit buildings across the country. Mostly that is apartments which we rent out, though sometimes we build condos, as well.

Q: You said national, do you compete in some of the same territory in which BFH has built its housing?

A: Our dominion extends to 47 states plus DC and Puerto Rico, and in many states we are in multiple cities, often with

multiple properties in some cities and regions. In every city where BFH built, we were there first.

Q: Is it your contention as part of the tort claims for intentional destruction of property which serve as the basis for your claims against BFH that BFH, in building affordable units in many states, did so with the express non-business purpose of reducing your property values and dismantling your businesses?

A: It's our contention that BFH has maliciously targeted us, as well as other developers and landlords, big and small, and has put destroying other businesses rather than simple turning a profit at the heart of its mission.

Q: So it's not healthy competition from BFH that you're upset about, but what you call this targeting of companies and landlords like yours?

A: Yes, that's right. We welcome competition, and we built a rental empire by being better at it than everyone else. We've competed against some pretty well-financed, innovative, and competent corporations in the past, and crushed them all. Mercilessly. BFH is doing something altogether different. It does not seek to win the rental game so much as burn down the market and make it unprofitable for everyone. What they are doing is not competition, it is a vendetta.

Q: You've stated the case pretty succinctly, so I have no further questions. We'll let the folks on the other side do

their best to try and distort your record. Thank you for your time.

A: Thank you.

EXAMINATION BY MS. HAYTHORNE, COUNSEL FOR THE DEBTOR

Q: So what does success look like for your corporation in this bankruptcy?

A: We have been wronged, and other landlords with us. Now BFH uses bankruptcy to shed liability for the harms it has caused us but wants to reorganize and continue to do much the same.

Meanwhile, the architect of this endeavor, David Hasseldorf, sits on a personal fortune in the tens of millions and thinks he can evade his responsibility as the one who aimed the flaming arrow. We will not allow him to get away with his ill-gotten gains by forcing a release of all claims against himself.

Q: Is that all, is this just about keeping your ability to seek future compensation from Hasseldorf for his role in your alleged torts?

A: No, of course not. We want to get compensation for all of the honorable home-providers in this suit. We want to maximize the payout, but not if this company continue operating in the same hostile manner and continue to cause harm. We will oppose any plan of reorganization that maintains the current disruptive business model. If our underlying tort claims are as valid as we

believe, the reorganized BFH would trigger massive new liabilities and send it back to bankruptcy. That makes any current plan of reorganization that doesn't radically alter the business model unconfirmable.

Q: And how exactly do you intend to bring this about, I mean, are you contending for a plan which doesn't allow BFH to ever build again?

A: BFH should liquidate. We believe it was a weapon Hasseldorf built to hurt our rental business with no prospect of profit. It accomplished that task admirably, but now he must pay the price and his weapon should be melted down. It is not a functional business and never was.

Q: Let's move on to a different topic for a minute. Is it fair to say it was your corporation, through Fjallraven, which first spearheaded the tort lawsuits against BFH across the country which precipitated this bankruptcy?

A: We were certainly involved from the start. And being one of the larger claimants in this pretty diverse group, we played a role in bringing complainants together who had all suffered various harms. Hasseldorf himself has admitted he wanted to hurt us with his public benefit corporation, but the collateral damage was immense. We are often the market leader in any city, but when BFH disrupts a market and drops prices precipitously,

nobody can make a profit - rendering what used to be revenue-producing assets into liabilities for everyone involved.

Q: Could you describe how you went about finding other tort claimants?

A: Well we are aware of the places where BFH has built, so we used our contacts in those communities, as well as some advertisements and campaigns, to bring together those who had been harmed by BFH and who wanted to seek compensation. It's a group that includes larger organizations like us all the way down to many, many folks who just own one rental property in order to help their savings. But everyone is united in their belief that Mr. Hasseldorf and his company intentionally wronged them as providers of housing.

Q: It's odd that you talk about what unites you and the other tort claimants. Are you all united in wanting the same thing?

A: Everyone wants compensation for the wrongs done. Smaller claimants will want to fold early and get a small payout rather than a long fight in the courts. We have the stomach for that fight, however, and large enough claims to prevent our creditor class from approving a plan. We will do our utmost to retain the rights of any who wish it to pursue Hasseldorf in addition to whatever result they would get from this bankruptcy process.

Q: You are not concerned that a liquidation would only pay off the secured lender and leave no money for tort claimants? Would

a reorganization with contributions from Hasseldorf and an auction of the reorganized company not be better?

A: Whatever Hasseldorf contributes, it will be less than his entire net worth. And let me be clear - we intent to take him for everything he has. It was all gotten off the backs of hardworking landlords and we will have recompense. The only way we would take his offering in a reorganization would be if we didn't believe in our claims against him. We do. He knows it too, because otherwise he wouldn't try to hide behind the bankruptcy of his weapon to prevent our claims from ever being litigated. Hasseldorf wants to force us to take a haircut on our claims and thinks smaller players will bite at the chance to avoid the uncertainty of future returns. He will find MogulCo is made of sterner stuff indeed.

Q: But given that you need to pierce the veil, you're far from guaranteed to succeed in your suit against Mr. Hasseldorf, in which case you might be left with no money as opposed to the guaranteed compensation that could be provided to the claimants under the Plan, isn't that correct?

A: We shall see. Actions speak louder than words, and if Hasseldorf believed it he would not offer so much money towards the reorganization to make our claims go away. We will have our day in court against him, and this bankruptcy will neither cajole nor coerce us into giving that up. Hasseldorf struck a

blow against our rental empire, and we will make an example of him for that. He does not get to walk away from the destruction he has wreaked with a meagre \$100 million contribution to the restructuring. We will leave him with nothing. If he wants the protections of bankruptcy, he should file himself.

Q: Well with that, I have no further questions. Thank you for your time.

EXCERPTS FROM DISCLOSURE STATEMENT

Background

Debtor Better Future Housing Co. (BFH) is a business that preserves and enriches local communities by creating affordable local rental housing and changing rental market dynamics in the areas around their apartments to create a wave of sustained lower rental prices. BFH is in Chapter 11 now because its work disrupts powerful real estate interests, which oppose a future in which people can pay less for quality living conditions. In response to BFH's construction and sale of several apartment complexes in Iowa, Illinois, California, and Texas these powerful landlords filed suit, seeking compensation for their reduced rents and the concomitant reduction in their overinflated property values. Although BFH contends that these claims are illegitimate, the sheer size of the claims and the inevitable costs of fighting multi-year legal battles in all of the states where BFH has had an impact have driven BFH to shed the claims and reorganize instead.

As it stands, BFH is well run and profitable, and holds good relationships with its trade creditors. Its business model is as follows: for each project, BFH pays a lump sum to David Hasseldorf, the company's founder and one-time owner, for a one-off use of his proprietary technology which combines geographic, demographic, and economic data to identify a target location in which to build an apartment complex. Then, BFH uses that information to design bid requirements and sends out a request for bids from trusted local contractors. Once the apartment complex is built, it is sold off to a local landlord under a set of restrictive covenants to raise cash for the next round of site identification and construction. The restrictive covenants ensure that rents from the building will stay lower than the going market rates. To compensate for selling an apartment complex subject to the covenant, BFH sells the complex at a significant discount,

leading to quality housing at affordable prices. The cash from the sale is paid into a revolving line of credit with FirstBank, BFH's only secured creditor. FirstBank's line of credit is secured by all of BFH's assets. At the end of each cycle of site identification, construction, sale of the apartment complex, payment of trade creditors, and payment of FirstBank, BFH is left with few assets, little cash, and few liabilities. BFH has been in this asset-light, liability-light state since 2019, when it wound down its last construction project and learned of the many powerful landed interests that were intent on bringing spurious lawsuits to stifle its mission.

BFH is a Delaware Public Benefit Corporation with its headquarters and principal place of business in Des Moines, Iowa. It was founded in 2014 by David Hasseldorf with investment from the socially conscious private equity firm Green Solutions Capital (GSC). In 2015, GSC bought out Hasseldorf's remaining 60% stake in the company for \$150 million to become the sole equity owner of BFH. GSC has encouraged BFH's independent Board of Directors to hold true to BFH's original mission as enshrined in its charter: making affordable housing that makes housing affordable.

Pending Litigation

BFH faces pending litigation on state law claims in Iowa, Illinois, New York, California, and Texas. All of the lawsuits involve the same plaintiffs' law firm, Fjallraven LLP, and all rely on the same theory: that BFH willfully and maliciously destroyed the landlords' property by dumping supply at cost with the intent to reduce the prices landlords could charge. The tort claimants' shared theory is that BFH's actions differ from legally unobjectionable competition because 1) BFH's charter as a public benefit corporation states that it is pursuing the reduction of property values and rents as a public good, a premeditated end in and of itself rather than as a means to achieve greater profit and 2) BFH's actions in pursuit of this goal diverge measurably

from profit maximization such that it cannot use market competition as a safe harbor to absolve it of the harms it has purposefully caused.

BFH entered Chapter 11 because it cannot take the risk of fighting all these lawsuits. Given the size of the claims, anything short of total legal victory would force the bankruptcy of an estate with even fewer resources as a result of protracted litigation. Even worse, that death knell for the organization could sound at any time. Suppliers would be hesitant to provide goods and services to a firm that could become unable to pay at any time. In such a scenario, ignoring this litigation and continuing business as usual would be akin to gambling on resurrection of a dead firm walking.

Instead, BFH has chosen to reorganize under Chapter 11 and sell the company to the highest bidder free and clear of these dubious but enormous tort claims. In this way, the business can recover and go back to making money and creating value for society.

Claims Against the Debtor

The following chart lays out the claims against the debtor.

Class	Name	Allowed Amount of Claims
Class 1 – Secured	FirstBank	\$200 million
Class 2 – Unsecured	Trade Creditors	\$2 million
Class 3 – Unsecured	Tort Creditors	\$5 billion (estimated)
Class 4 – Equity Owners	Shareholders	Remainder

Hypothetical Recovery of Creditor Classes in Liquidation

The following chart lays out recovery each class of creditors could expect from a hypothetical liquidation of the estate. After administrative and legal costs, the total liquidation value of the estate is estimated at \$170 million. This would be insufficient to satisfy the \$200 million secured claim held by FirstBank, which must be paid in full before unsecured creditors receive any money in liquidation.

Class	Name	Hypothetical Recovery in Liquidation
Class 1 – Secured	FirstBank	\$170 million
Class 2 – Unsecured	Trade Creditors	\$0
Class 3 – Unsecured	Tort Creditors	\$0
Class 4 – Equity Owners	Shareholders	\$0

Description of Proposed Chapter 11 Plan

The proposed Plan of Reorganization revolves around the forced release of David Hasseldorf from claims against him in his personal capacity. Without the release of these claims, Hasseldorf will contribute nothing to the reorganization, which effectively would force liquidation. In exchange for the release, Hasseldorf will contribute to both the reorganized company and the estate.

Class	Name	Recovery Under Proposed Plan of Reorganization
Class 1 – Secured	FirstBank	Can credit bid \$200 million + new money in open auction for equity ownership of reorganized company, which includes ownership of the proprietary location-finding program contributed by Hasseldorf.
Class 2 – Unsecured	Trade Creditors	Paid \$40,000 immediately. This constitutes 2% of the claim amount. Of any additional funds generated by the auction of the company, .04% will also be paid to this class immediately.
Class 3 – Unsecured	Tort Creditors	Payment from a trust containing \$100 million contributed by Hasseldorf. This constitutes 2% of the notional claim amount. Of any additional funds generated by the auction of the company, 99.96% will be contributed to the trust.
Class 4 – Equity Owners	Shareholders	\$0

Reorganized Company

Under the proposed Plan, Hasseldorf will cede ownership of his proprietary location-sourcing program to the reorganized company. This contribution directly benefits the estate because the reorganized company will then be put up for auction, with FirstBank serving as a stalking-horse bidder to drive up the price. Not only does ownership of the proprietary program give the reorganized company a significantly valuable asset on its own, but it unlocks additional synergies within the reorganized company. During the company's operations between 2015 and 2019, BFH paid Hasseldorf \$25 million each time it used his program to identify a building site. Even if the reorganized company does nothing to further exploit the value of the program beyond continuing its pattern of past use, continuing business as usual without paying that \$25 million fee for each project puts the company on the path to immediate profitability if run with a smaller debt load.

Hasseldorf's Contribution to Unsecured Creditors

Additionally, Hasseldorf will contribute \$40,000 for the payment of trade creditor claims immediately and will place \$100 million into a trust for the payment of claims by tort creditors once those claims are reduced to judgment. Both of these pools of money will be supplemented based on their estimated weight (99.96% to .04%, respectively) by any additional money generated from the auction of the reorganized company beyond the \$200 million necessary to satisfy the secured creditor.

Auction of Reorganized Company

The auction for ownership of the reorganized company will be open to the public and publicized appropriately for three months before the sale. In this auction, FirstBank will act as a

stalking horse and will be able to bid forgiveness of its \$200 million secured debt in addition to new money. Assuming an absolute minimum of \$220 million, the auction of the reorganized firm as supplemented by Hasseldorf's contribution of the proprietary program should be expected to generate additional value to unsecured creditors.

Hasseldorf Releases

In exchange for his contributions, Hasseldorf will be released from personal liability by all entities, involved in this litigation or not, for all claims in the past, present, and future for anything related to BFH, his proprietary location-finding program, or reduced property values attributable to BFH's buildings.

Valuation of Reorganized Company

The valuation of the reorganized company is made up of two categories. The first is current assets and the second is future revenues. By combining these estimates, it is possible to estimate the value of the company.

Current Assets

Asset	Value
\$170 million in cash	\$170 million
Proprietary program contributed by Hasseldorf	\$25 million–\$100 million

Future Earnings – Conservative Estimate

Reproduced below is a copy of BFH's income statement for Fiscal Year 2018–2019.

Income statements for Fiscal Years 2015–2018 were substantially the same.

FY 2018-2019 Income Statement (millions)		
	Sales	205
		-
	Direct Labor and Materials	150
	Finder's Fee to Hasseldorf	-25
	Outsourced Management to GCSM	-50
Gross Profit		-20
Earnings Before Interest and Taxes		-20
	Interest Paid	-10
	Taxes Paid	0
Net Income		-30
	Accumulated Deficit Closed Out	30
Retained Earnings		0

The two highlighted costs, \$25 million paid to Hasseldorf for use of his proprietary program and \$10 million in interest paid on FirstBank's \$200 million loan, would cease to exist for the reorganized company. This new company would turn an immediate pre-tax profit of \$5 million a year. The company could also use the proprietary program to raise additional revenue by, for example, selling access to other firms or expanding the rate at which new projects begin.

Because the reorganized company will hold no debt, it could take on significant leverage to grow quickly.

Combined Value

The value of the reorganized company is at least \$220 million, but could be considerably higher in an auction. GSC bought Hasseldorf's shares of BFH in 2015 at an implied \$250 million valuation for the company, even when it was saddled with debt and did not own Hasseldorf's proprietary program.

Risk Factors to Approval of the Plan

The proposed plan has one key risk factor: it is not clear whether the releases of the tort claims against David Hasseldorf can be obtained. The proposed plan requires releases which would prevent all current and future tort claimants against Hasseldorf in his personal capacity for his involvement with BFH. The large commercial landlords who control 80% of the value of claims in Class 3 have strenuously voiced their opposition to granting these releases, and Class 3 as a whole will be unable to approve the plan without them.

Without consent of the Class 3 creditors, the plan can only be confirmed through a "cram-down" procedure, where the plan is approved over the opposition of Class 3 and the releases are imposed upon them without their consent (the "Non-Consensual Third-Party Release"). These types of releases have been contested in various circuits. The Eighth Circuit, where this bankruptcy case resides, has not decided definitively which legal test to use when determining the legality of a Non-Consensual Third-Party Release. Due to this uncertainty, there is a substantial risk that a judge could reject the plan. This risk cannot be mitigated, however,

because there is no viable plan of reorganization without Hasseldorf's contribution of assets, contributions which he has conditioned on the release of his personal liability.

**JUDICIAL ORDER APPROVING DISCLOSURE STATEMENT
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

NO. 21-9605PU

In re: BETTER FUTURE HOUSING CO.

Chapter 11

ORDER APPROVING DISCLOSURE STATEMENT

The disclosure statement submitted by Better Future Housing Co. in connection with their reorganization complies fully with the requirements of 11 U.S.C. § 1125. After a short hearing today in which no claimants objected to the contents of the disclosure statement, I now approve BFH's disclosure statement in connection with its Proposed Plan of Reorganization. Now that the disclosure statement is approved, BFH is free to solicit votes for its Proposed Plan.

Judge Paulo Uccello

May 4, 2021

EXCERPTS FROM PROPOSED PLAN OF REORGANIZATION

Article III – Classification and Treatment of Classified Claims and Equity Interests

Class	Name	Allowed Amount of Claims	Status	Voting Rights	Support Agreement
Class 1 – Secured	FirstBank	\$200 million	Impaired	Entitled to Vote	Agrees to Support
Class 2 – Unsecured	Trade Creditors	\$2 million	Impaired	Entitled to Vote	Agrees to Support
Class 3 – Unsecured	Tort Creditors	\$5 billion (estimated)	Impaired	Entitled to Vote	Does Not Agree
Class 4 – Equity Owners	Shareholders	Remainder	Impaired	Entitled to Vote	Agrees to Support

Class 1:

- a. Classification: Class 1 consists of FirstBank’s claim which is secured by substantially all of Debtor’s assets.
- b. Treatment: FirstBank will make a credit bid of \$200 million to take full ownership of the equity of the Debtor as the stalking horse in an open auction process. If an outside bidder outbids FirstBank, then FirstBank will receive \$200 million in cash from that bid. If no outside bidder outbids FirstBank, then FirstBank will forgive the \$200 million Debtor owes and take ownership of Debtor instead.
- c. Voting: FirstBank will not receive payment in full on the original conditions owed. As such, FirstBank is entitled to vote.

Class 2:

- a. Classification: Class 2 consists of the Debtor's trade creditors. These are the contractors who assist in building condominiums for the Debtor who remained unpaid or whose payment was clawed back into the Debtor's Estate as preferential transfers.
- b. Treatment: David Hasseldorf, the founder of Debtor, will contribute \$40,000 to a fund which will pay each trade creditor 2% of the value of their claim immediately upon plan confirmation, with the potential for spillover payments from the auction proceeds, distributed pro rata with members of Class 3.
- c. Voting: Class 2 is impaired because it will go underpaid, violating the rights to payment the trade creditors held before bankruptcy. Class 2 is entitled to vote, and each of the trade creditors in this class has signed an agreement to support this plan.

Class 3:

- a. Classification: Class 3 consists of the Debtor's tort claimants, who have prospective lawsuits against Debtor for intentionally and willfully destroying their property value by building affordable housing nearby.
- b. Treatment: David Hasseldorf will contribute \$100 million to a trust which will pay 2% of the value of each claim after it is reduced to judgment in the courts. If an auction for the Debtor's assets raises enough money to pay off FirstBank with extra money left over, that money will be added to the amount used to pay the tort creditors in Class 3 pro rata with the members of Class 2.
- c. Voting: Class 3 is impaired because it will go underpaid, violating the right to payment the creditors would have once they receive their judgments. Accordingly, Class 3 is entitled to vote.

Class 4:

- a. Classification: Shareholders of Debtor hold an interest in the Estate.
- b. Treatment: The shareholders of the Debtor will receive nothing, as all assets of the Debtor will be exchanged for FirstBank's claim and even if an outside bidder exceeds FirstBank's bid, they would need to do so by many orders of magnitude before it becomes possible that any value is left for shareholders.
- c. Voting: Shareholders will be impaired and thus entitled to vote.

Article IX – Release of Claims Against David Hasseldorf

David Hasseldorf will contribute to the Plan in two ways:

- 1) Hasseldorf will contribute \$40,000 in cash to pay part of the claims against the Debtor held by Class 2, and will contribute \$100 million to pay part of the claims against the Debtor held by Class 3.
- 2) Hasseldorf will contribute to the assets of the newly reorganized business giving it ownership of his proprietary software program that the Debtor used to pay him to access.

In exchange, Hasseldorf will be released from any and all claims held against him at any point in the past, present, or future that arise out of his connection with Debtor's work in any way. The people that will release Hasseldorf from their claims against him include everyone, be they party to this reorganization or not, at any time and in any place.

**OBJECTION TO CONFIRMATION OF PROPOSED PLAN
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

NO. 21-9605PU

In re: BETTER FUTURE HOUSING CO.

Chapter 11

TO THE HONORABLE Paolo Uccello, Bankruptcy Judge:

The Official Unsecured Creditor Committee, representing creditors of the Debtor above named, hereby objects to the confirmation of the plan filed by the said Debtor, and specifies the following as grounds of objection:

1. Third-party non-consensual releases, such as the one approved in the Debtor's Plan, are not authorized by the United States Bankruptcy Code or any other statute.
2. Even if such releases as specified above are permitted, the facts of this case do not provide sufficient grounds for invoking this extraordinary remedy.

3. Such releases, such as the one approved in the Debtor's Plan, are not within the jurisdiction of a non-Article III Court such as the Court which approved the Plan.

WHEREFORE, The Committee prays that the Court deny confirmation of the proposed Chapter 11 Plan.

July 8, 2021

Signed Georg Bassett

Attorney for Unsecured Creditors' Committee

10660 E County Line Rd

Des Moines, IA, 50320

(515) 867-5309

VOTES ON PROPOSED PLAN

Class	Name	Allowed Amount of Claims	Status	Class Vote on Plan Confirmation	Votes in Favor of Plan Confirmation
Class 1 – Secured	FirstBank	\$200 million	Impaired	In Favor	100% in favor
Class 2 – Unsecured	Trade Creditors	\$2 million	Impaired	In Favor	100% in favor
Class 3 – Unsecured	Tort Creditors	\$5 billion (estimated)	Impaired	Opposed	95% of members in favor, but only 20% of claim amount*
Class 4 – Equity Owners	Shareholders	Remainder	Impaired	In Favor	100% in favor

* For a class to vote in favor of confirming a Chapter 11 plan of reorganization, the class members voting in favor must control 2/3 the amount of claims and comprise 1/2 the number of class members. Because the 5% of Class 3 members who opposed the plan control 80% of the claim amount, the Class 3 does not vote in favor of confirming the Plan.

**JUDICIAL ORDER CONFIRMING PROPOSED PLAN
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

NO. 21-9605PU

In re: BETTER FUTURE HOUSING CO.

Chapter 11

ORDER CONFIRMING PROPOSED PLAN OF REORGANIZATION

After a confirmation hearing in which opponents to the Plan aired their grievances, I am nevertheless satisfied that the plan was proposed in good faith, is feasible, and is in compliance with the Bankruptcy Code, having satisfied the requirements of Section 1129 of the Code. While Class 3 did not vote in favor of confirming the Plan, no parties contest that the Plan is fair, equitable, and non-discriminatory as it pertains to Class 3. While the good faith and feasibility of the Plan are not contested, a large portion of the confirmation hearing was spent contesting whether the Plan complies with the Bankruptcy Code and whether this Court has the constitutional authority to approve the plan as it is designed. Two main arguments were raised against the legality of the Plan, focusing in particular on the legality of the nonconsensual third-party release of all claims against David Hasseldorf and the Court's power to approve it. I will discuss each in turn to explain why this Plan complies with the Code.

1. This Court Has Authority to Approve the Release

The first argument raised by the tort claimants who comprise Class 3 is that this Bankruptcy Court does not have the necessary power to grant a non-consensual third-party release because under *Stern v. Marshall*, 564 U.S. 462 (2011), an Article I court like this Bankruptcy Court is limited to entering final judgment on claims that arise from the bankruptcy process itself. Following this, Class 3 posits that claims against Hasseldorf are not all necessarily claims that arise from this bankruptcy process. Following *In Re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137–140 (3d Cir. 2019), it is clear that a Bankruptcy Court has authority to confirm a plan including such a third-party release where the release is integral to the restructuring.

The Release is Integral to the Restructuring

This restructuring would not be possible without this release for two reasons. First, Hasseldorf’s cooperation is necessary for the post-restructuring firm to be viable. Before bankruptcy, the firm relied on Hasseldorf’s unique and proprietary software program to identify its building sites to turn a profit and advance its social agenda of making the surrounding housing more affordable. Hasseldorf is not obligated to provide the restructured firm any access to this software, and his choice to withhold access would immediately deprive the firm of its method for finding profitable places to build—even assuming it ceased trying to also promote a social good.

In short, Hasseldorf withholding cooperation would immediately destroy the value of the business as a going concern. Hasseldorf has generously provided both a carrot and a stick to creditors, offering to contribute ownership of the software program to the go forward business in exchange for the release, and threatening to sink the firm if he does not receive a release. By

giving the software to the firm, he dramatically increases the viability of the restructured firm by eliminating the software usage fees it was paying pre-bankruptcy and ensuring that the firm will have guaranteed access to the knowledge of where to build in the future.

Second, Hasseldorf contributes all of the money the Plan sets aside to pay a portion of Classes 2 and 3's claims against the Debtor. Without Hasseldorf's contribution in exchange for his release, FirstBank would take all of the value of the firm, and all other claims against the Debtor would be wiped out.

2. The Bankruptcy Code Allows for This Nonconsensual Third-Party Release

As an initial matter, it is worth noting that the legality of non-consensual third party releases is contested across circuits. This disagreement stems from the tension between two sections of the Bankruptcy Code: sections 105(a) and 524(e). Section 105 allows a Bankruptcy Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Chapter 11]." Section 524 provides that "... discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." The minority of circuits outright prohibit nonconsensual third party releases as violative of 524(e). In the majority of circuits that have ruled on the issue, some test is applied to determine whether the facts merit the use of such a release.

There are a variety of tests used in different circuits to determine whether a nonconsensual third-party release is allowed. Prior case law in this Bankruptcy Court assumed the power to grant such a release under the right circumstances and applied the factors from *Master Mortgage*, 168 B.R. 930 (Bankr. W.D. Mo. 1994), to determine whether the facts warranted such a release. *See, e.g., Matter of Fansteel Foundry Corp.*, No. 16-01825-ALS11,

2018 WL 5472928, at *11 (Bankr. S.D. Iowa Oct. 26, 2018); *In re Riverbend Leasing LLC*, 458 B.R. 520, 526 (Bankr. S.D. Iowa 2011) (citing *In re Master Mortgage Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)). In the absence of controlling precedent preventing this court from allowing non-consensual third party releases, I will do the same. Though a variety of other tests exist, in my judgment the five *Master Mortgage* factors are appropriate in this case, for the reasons set forth below.

(1) there is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate;

This is not true in the direct sense of identity of interest such that taking money from Hasseldorf actually takes money from the Debtor, but Hasseldorf's credible threat to sink the post-reorganization firm means that a suit against Hasseldorf would, in practical effect, deplete the assets of the estate by rendering the estate worthless. The essence of this prong is that harm to the release beneficiary is harm to the bankruptcy estate. That is true here.

(2) the non-debtor has contributed substantial assets to the reorganization;

Hasseldorf has contributed more than \$100 million in cash and vital intellectual property worth an indeterminate amount. While the cash contributions on their own would likely not be substantial, the addition of the intellectual property is.

(3) the injunction is essential to reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor;

As discussed above, this reorganization would not be possible without the injunction because Hasseldorf would erase the value of the estate.

(4) the impacted class, or classes, has overwhelmingly voted to accept the plan;

In this case the impacted class is the group of tort claimants with claims against both Debtor and Hasseldorf arising from the intentional destruction of their property values for the sake of value destruction itself. These creditors voted overwhelmingly in favor of the plan. 95% of the claimants in Class 3 voted in favor of the plan, but the class voted to reject the plan because the claims held by those who voted in favor are small and easily outweighed by the few very large claimants in Class 3 who voted against confirmation of the plan.

(5) the plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction;

The plan only provides to pay for a miniscule portion of the allowed claims held by the affected class. This injunction appears to wipe out 95% of the value of allowed claims against the Debtor and all of the value of claims against Hasseldorf. Because a Bankruptcy Court such as this can determine the amount of claims allowed but cannot decide the damages actually owed on these claims, the true amount of each claim wiped out would likely be lower if the amounts of those claims were litigated rather than being paid out by the plan's trust without litigation. The fact that post-litigation damages would likely be lower than the allowed claim amounts on which the plan allocates assets allays my concerns about the small amount of payment for each member of Class 3.

When considering these five *Master Mortgage* factors, I weigh the pseudo-identity-in-interest, significant contribution from Hasseldorf, and essential nature of the injunction to the reorganization in favor of approving the release, and the disapproval of the impacted class and

serious underpayment of the impacted class against. There is one additional consideration that tips the scales in this case: the public good provided by the Debtor. While bankruptcy law generally evinces a preference for preserving value to liquidation, that preference should be even more pronounced in the case of organizations acting for the benefit of the public. To the extent this public-good-producing firm is even more important to reorganize than a standard firm, the Code would seem to put a thumb on the scales in favor of approving mechanisms essential to that reorganization.

After giving serious consideration to these two issues raised in the confirmation hearing, I now order the Plan Confirmed.

Judge Paolo Uccello

September 10, 2021

NOTICE OF APPEAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IOWA

-----X
In re: Better Future Housing Co. : Chapter 11
: Case No. 21-9605PU
Debtor. :
-----X

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Unsecured Creditors' Committee hereby appeals to the United States District Court for the Southern District of Iowa from the Plan Confirmation Order entered on September 10, 2021.

PLEASE TAKE FURTHER NOTICE that the names of all parties to the Order appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Appellee:

Unsecured Creditors' Committee

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Dated: September 12, 2021

Des Moines, Iowa

Respectfully submitted,

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*Attorney for Unsecured
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ORDER GRANTING STAY

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

NO. 21-9605PU

In re: BETTER FUTURE HOUSING CO.

Chapter 11

ORDER GRANTING STAY PENDING APPEAL

This Court orders a stay to implementation of the Plan of Reorganization *sua sponte* in recognition of the uncertainty surrounding the legality of the plan confirmed. While this Court's considered judgment is that the plan is legally confirmable, the Committee has exercised its right to appeal that decision. The purpose of such an appeal would be defeated if the plan was implemented in the interim such that even a reversal of this Court's decision could not unscramble the proverbial eggs.

A motion for stay pending appeal is governed by Fed. R. Bankr. P. 8007. The allowance of a motion for stay pending appeal is discretionary. Courts consider a four-part standard applicable to preliminary injunctions to determine whether to grant or deny a motion for stay pending appeal. The court must consider (1) whether the applicant has made a strong showing of success on the merits; (2) whether the applicant will be irreparably harmed absent injunctive relief; (3) whether issuance of the stay will injure other parties; and (4) where the public interest lies.

Discussion

The first factor the court must consider in a motion for stay pending appeal is whether the movant has a likelihood of success on the merits of the appeal. In this instance, I choose to order a stay pending appeal in recognition of the significant possibility that the Committee is successful in its appeal.

The statutory interpretations of the Bankruptcy Code concerning non-consensual third-party releases as well as the constitutional permissibility of such releases are not settled, either in this Circuit or at the level of the Supreme Court. Given the unsettled precedents, the Committee convincingly contends that no court can predict in advance with any certainty which side will prevail at the appellate level, leaving a strong possibility that they will prevail on the merits in an appeal of their case.

The second and third factors are decidedly in the Committee's favor. The Plan, once implemented, could not be unwound and the parties put back in their original positions if an appeal were to reverse the Plan Confirmation.

The public interest would be served by a stay since the Committee and the many creditors they represent would suffer irreparable harm if the Plan were implemented and no other party would suffer irreparable harm from a stay.

In view of the foregoing, the motion for stay pending appeal filed by the Debtor is hereby granted.

IT IS SO ORDERED.

Judge Paolo Uccello

September 14, 2021

CERTIFICATION

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

NO. 21-9605PU

In re: BETTER FUTURE HOUSING CO.

Chapter 11

CERTIFICATION OF ISSUES TO COURT OF APPEALS

Under 28 USC § 158(d)(2)(i), this Court certifies that the following two issues—the only two currently in contention for this case—involve questions of law as to which there is no controlling decision of the Court of Appeals of the Eighth Circuit or the Supreme Court of the United States. Furthermore, these issues involve a matter of public importance in light of the rising tide of bankruptcy reorganizations making use of the type of release at issue here. Considering the importance of these issues and the lack of controlling precedent on them, this Court is directly certifying the case to the Eighth Circuit instead of attempting to answer the problem first. The two questions of law are:

1. Does a bankruptcy judge have authority consistent with Article III of the Constitution to confirm a plan of reorganization that grants a non-consensual release of a non-debtor from state law claims asserted by a third party?
2. Does the U.S. Bankruptcy Code permit the confirmation of a Chapter 11 reorganization plan that includes a non-consensual third-party release, and if so, which test should the

Eighth Circuit adopt to apply to the facts at hand? Under whichever test the Eith Circuit adopts, do the facts of this case allow for such a release?

Judge Kayle Naroditsky

October 1, 2021

ORDER AUTHORIZING CERTIFICATION OF APPEAL

NO. 21-9605

In the

United States Court of Appeals

For the

Eighth Circuit

In re Better Future Housing Co.

Unsecured Creditors' Committee,
Appellant

vs.

Better Future Housing Co.,
Appellee

Order Authorizing Certification of Appeal

This Court has received a certification from the United States District Court for the Southern District of Iowa under 28 U.S.C. § 158(d)(2)(A) of an appeal to it from the confirmation of a Chapter 11 Plan of Reorganization in the Bankruptcy Court for the Southern District of Iowa.

This Court now exercises its discretion to authorize the certification and take jurisdiction to decide the appeal.

Judge Michael Tal

October 8, 2021