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New Bal Harbour Hotel Suit Targets Lumber Liquidators Founder

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A bankruptcy clawback lawsuit involving the financially troubled Bal Harbour Hotel & Spa takes aim at the deepest pocket in the case: Lumber Liquidators founder Tom Sullivan.

The complaint was filed by the condominium and hotel associations in Miami bankruptcy court on behalf of all debtors of Elcom Hotel & Spa LLC, which Sullivan co-founded to manage the complex.

The civil racketeering derivative complaint seeking more than $20 million names Sullivan and his partners, Colombian real estate businessmen Jorge Arevalo, his brother Juan Arevalo and related entities. It accuses them of fraud, racketeering, gross negligence, breach of fiduciary duty and other counts.

The associations filed similar lawsuits in Miami-Dade Circuit Court in 2010 without Sullivan as a defendant. That litigation has been temporarily stayed after Elcom filed for bankruptcy protection.

The clawback suit filed Thursday is the first litigation, though, to individually name Sullivan, who owns Toano, Virginia-based Lumber Liquidators Holdings Inc.

Sullivan's Miami lawyer, Mark Meland, co-founder of Meland Budwick, P.A., said the new lawsuit is a "mechanism to extract a settlement."It also follows the filing of nearly $60 million in proof of bankruptcy claims in May outlining allegations of fraud by the Arevelos.

U.S. Bankruptcy Judge Robert Marks has ordered the associations and others that filed proof of claims to enter mediation with Elcom by mid-September.

> "We are very disappointed at the unnecessarily aggressive, spurious tactics that are not productive toward seeking a mutually beneficial resolution," Meland said. "Mr. Sullivan intends to vigorously defend the outrageous allegations against him, which are meritless."

OPERATING FUNDS

One Bal Harbour consists of 185 condos with individual owners and 124 hotel rooms owned by investors. Common areas are shared.

Steve Pardo, an attorney for the hotel condo association, said Sullivan made a power move after the associations filed litigation in state court.

He said Sullivan sold more than three dozen units, garnered about $9.2 million and positioned himself to take control of the company through the bankruptcy process.

"Instead of protecting the creditors, he took his money out of the debtor's estate," said Pardo, a partner with Pardo Gainsburg in Miami. "Sullivan is not an innocent victim."

Sullivan and Jorge Arevalo purchased 51 units and the common areas in 2009 for $14.6 million after the hotel's previous owner, WCI Communities Inc., filed for bankruptcy protection. Regent Hotels & Resorts pulled its flag, and the Arevalos took over management of the complex.

A consultant for the 10295 Collins Avenue Hotel Condominium Association Inc. said the association lawsuits show how the brothers siphoned off millions of dollars.

"They had taken funds intended for operations and acquired exotic cars like a Ferrari and a BMW and some toys like WaveRunners," consultant Michael Browarnik of North American Capital Advisers LLC in Miami Beach said. "All of this came from funds intended to be allocated for operations or distributed to our clients."

After a court-appointed receiver for One Bal Harbour was removed, a restructuring officer was put in place with Sullivan still in control of Elcom.

Jorge Arevalo's attorney Joseph DeMaria, a partner at Tew Cardenas in Miami, said

the new lawsuit is a retread of the allegations made in state court.

DeMaria said the stay in the state court litigation is only until October.

“The rules don’t allow for a two-front war,” he said. “The residential association, the hotel association and Mr. Arevalo have been litigating these issues in state court for 3½ years. A great deal of work has been done.”