Docket #0528 Date Filed: 6/20/2024

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

**The following constitutes the ruling of the court and has the force and effect therein described.**

Michelle V. Larson

**Signed June 17, 2024**

**United States Bankruptcy Judge**

---

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

| | |
|---|---|
| In Re:<br><br>NORTHWEST SENIOR HOUSING CORPORATION, *et al.*[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 22-30659 (MVL) |
| Leif M. Clark, Trustee of the Edgemere Litigation Trust<br><br>Plaintiff,<br><br>v.<br><br>Intercity Investment Properties, Inc. and Kong Capital, LLC,<br><br>Defendants. | Adv. No. 22-03040 (MVL) |

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO COMPEL AFTER PRODUCTION OF DOCUMENTS IN CAMERA**

Before the Court are two motions: (1) the *Motion to Compel Production by the Plaintiff* [ECF No. 362] and the *Supplemental Brief Regarding the Lifespace Privilege Waiver and*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

2230659240625000000000008

*GrayRobinson Communications* [ECF No. 434] (collectively, the "**Lifespace Motion**") filed by Defendants Intercity Investment Properties, Inc. ("**ICI**") and Kong Capital LLC ("**Kong**") (collectively, the "**Defendants**") and (2) the Defendants' *Supplemental Motion to Compel Production of FTI Consulting, Inc. Documents and Brief in Support* [ECF No. 386] and *Supplemental Brief Regarding FTI Consulting, Inc. Documents* [ECF No. 442] (collectively, the "**FTI Motion**"). The Court issued its Order on the Motions to Compel [ECF No. 512] (the "**Order**") on April 25, 2024. In the Order, the Court ordered the parties to meet and confer and deliver 100 documents across the Lifespace, FTI, and GrayRobinson Communications for *in camera* review to determine whether work product protection attached. The Court, having reviewed the pleadings on file, the arguments of counsel, and the documents, is of the opinion that the Motions should be granted in part and denied in part as set forth below.

**IT IS HEREBY ORDERED THAT,** as to the docs produced *in camera*,

**Lifespace Documents**

| Log Row # | RULING |
|---|---|
| 20 | Overruled |
| 46 | Overruled |
| 54 | Overruled |
| 106 | Overruled |
| 209 | Overruled |
| 210 | Overruled in Part |
| 211 | Overruled in Part |
| 212 | Overruled in Part |
| 213 | Overruled in Part |
| 266 | Overruled |
| 267 | Overruled in Part |
| 314 | Overruled |
| 315 | Overruled |
| 351 | Overruled |
| 362 | Sustained |
| 363 | Sustained |
| 433 | Sustained |
| 501 | Sustained |
| 514 | Overruled in Part |

| | |
|---|---|
| 515 | Overruled in Part |
| 603 | Sustained |
| 688 | Sustained |
| 812 | Overruled |
| 813 | Overruled |
| 819 | Overruled |
| 820 | Overruled |
| 841 | Sustained |
| 842 | Sustained |
| 843 | Sustained |
| 909 | Overruled |
| 910 | Overruled |
| 941 | Sustained |
| 942 | Sustained |
| 1265 | Sustained |
| 1266 | Sustained |
| 1278 | Sustained |
| 1678 | Sustained |
| 2285 | Overruled |
| 2296 | Overruled |
| 2332 | Sustained |
| 2711 | Sustained |
| 2770 | Overruled |
| 2797 | Sustained |
| 2882 | Sustained |
| 2883 | Sustained |
| 2884 | Sustained |
| 2930 | Sustained |
| 2948 | Sustained |
| 2975 | Sustained |
| 3002 | Sustained |
| 3056 | Sustained |
| 3057 | Sustained |
| 3075 | Sustained |
| 3076 | Sustained |
| 3077 | Sustained |
| 3078 | Sustained |
| 3083 | Sustained |
| 3084 | Sustained |
| 3085 | Sustained |
| 3092 | Sustained |
| 3093 | Sustained |
| 3094 | Sustained |
| 3119 | Sustained |
| 3137 | Sustained |

| | |
|---|---|
| 3138 | Sustained |
| 3139 | Sustained |
| 3171 | Sustained |
| 3172 | Sustained |
| 3173 | Sustained |
| 3174 | Sustained |
| 3175 | Sustained |
| 3176 | Sustained |
| 3177 | Sustained |
| 3185 | Sustained |
| 3228 | Sustained |
| 3229 | Sustained |
| 3230 | Sustained |
| 3231 | Sustained |
| 3254 | Sustained |
| 3255 | Sustained |
| 3285 | Overruled |
| 3296 | Sustained |
| 3297 | Sustained |
| 3305 | Sustained |
| 3372 | Sustained |
| 3373 | Sustained |
| 3374 | Sustained |
| 3448 | Sustained |
| 3449 | Sustained |
| 3460 | Sustained |
| 3497 | Sustained |

**Plaintiff's Documents**

| Tab No. | DISCO ID No. | RULING |
|---|---|---|
| 1 | 8046 | Sustained |
| 2 | 29088, 29550, 29552 | Sustained |
| 3 | 32261, 30218 | Sustained |
| 4 | 29889, 30431 | Overruled |
| 5 | 15739 | Sustained |
| 6 | 14884 | Overruled |
| 7 | 23401, 12542, 16655 | Sustained |
| 8 | 30067, 30436, 30435 | Sustained |
| 9 | 19219 | Sustained |
| 10 | 16904 | Sustained |
| 11 | 15753 | Sustained |
| 12 | 16934 | Sustained |
| 13 | 28180, 28578, 28580 | Overruled |
| 14 | 25128 | Sustained |

| | | |
|---|---|---|
| 15 | 8320 | Sustained |
| 16 | 23949 | Sustained |
| 17 | 10264 | Overruled |
| 18 | 25514, 25798, 25802 | Sustained |
| 19 | 28336, 28753, 28752, 28755 | Sustained |
| 20 | 24142 | Overruled |
| 20 | 7806 | Sustained |
| 21 | 28115, 28815 | Sustained |
| 22 | 32866, 33505 | Sustained |
| 23 | 9170 | Overruled |
| 24 | 12393 | Sustained |
| 25 | 16025 | |
| 26 | 15368 | |
| 27 | 24527 | Sustained |
| 28 | 25609 | Sustained |
| 29 | 33001, 33436, 33435 | Sustained |
| 30 | 16071 | Overruled |
| 31 | 12378 | Overruled |
| 32 | 24433 | Sustained |
| 33 | 23639 | Overruled |
| 34 | 10182 | Sustained |
| 35 | 24856 | Sustained |
| 36 | 15660 | Sustained |
| 37 | 16119 | Sustained |
| 38 | 27231, 27734 | Sustained |
| 39 | 24367 | Sustained |
| 40 | 32881, 33511, 33508, 33509 | Sustained |
| 41 | 28134, 28648 | Sustained |
| 42 | 29286, 29697 | Sustained |
| 43 | 33514, 34323, 34325 | Sustained |
| 44 | 26423, 26694 | Sustained |
| 45 | 26534, 26721 | Sustained |
| 46 | 29980, 30326 | Sustained |
| 47 | 36241, 36363 | Sustained |

1. The following Lifespace Documents are not considered protected work product, and the work product protection assertions are hereby overruled: Privilege Log Row Nos. 20, 46, 54, 106, 209, 266, 314, 315, 351, 515, 812, 813, 819, 820, 909, 910, 2285, 2296, 2770, and 3285.

2. The Lifespace Documents at Privilege Log Row Nos. 210, 211, 212, 213, 266, 514, and 515 are not considered protected work product, except for any reference to other properties and personal resident information. Those portions may be redacted by Lifespace or Plaintiff prior to production.

3. The following Plaintiff Documents are not considered privileged or protected work product, and the privilege assertions are hereby overruled: Tabs 4, 6, 13, 17, 20 (DISCO ID 24142), 23, 25, 26, 30, 31, and 33.

4. With respect to Plaintiff's Documents referenced at tabs 25 and 26, the Court requires more information related to the context of these documents prior to issuing its ruling. The Court needs more information about whether the process described in these communications is legal in nature and related to the Edgemere Bankruptcy. Plaintiff is ordered to submit such information to the Court within ten (10) days of the date of the entry of this Order.

5. For all other documents that were submitted *in camera*, the privilege assertions are sustained, and the documents are considered privileged or protected work product, as applicable.

6. The *in camera* review discussed in this Order addresses a sampling of the documents at issue in the Motions. Plaintiff is directed, within fourteen (14) days following the entry of this Order, to further review its privilege assertions as to the other documents at issue in the Motions and: (a) produce those documents, if any, that its further review shows are not privileged; and (b) provide to Defendants an amended and restated privilege log. Any further disputes shall require further conference and motion practice.

# # # END OF ORDER # # #

United States Bankruptcy Court

Northern District of Texas

Leif M. Clark, Trustee of the Edgemere L,

Plaintiff

Adv. Proc. No. 22-03040-mvl

Intercity Investment Properties, Inc.,

Defendant

# CERTIFICATE OF NOTICE

District/off: 0539-3 User: admin 

Date Rcvd: Jun 18, 2024 Form ID: pdf001 Total Noticed: 3

The following symbols are used throughout this certificate:

| Symbol | Definition |
|---|---|
| + | Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP. |

**Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jun 20, 2024:**

| Recip ID | | Recipient Name and Address |
|---|---|---|
| aty | + | Ryan C. Hardy, Levenfeld Pearlstein, LLC, 120 S. Riverside Plaza, Suite 1800, Chicago, IL 60606-3911 |

TOTAL: 1

**Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.**
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

| Recip ID | | Notice Type: Email Address | Date/Time | Recipient Name and Address |
|---|---|---|---|---|
| ust | + | Email/Text: ustpregion06.da.ecf@usdoj.gov | Jun 18 2024 21:15:00 | United States Trustee, 1100 Commerce Street, Room 976, Dallas, TX 75242-0996 |
| ust | + | Email/Text: ustpregion07.au.ecf@usdoj.gov | Jun 18 2024 21:15:00 | United States Trustee - AU12, United States Trustee, 903 San Jacinto Blvd, Suite 230, Austin, TX 78701-2450 |

TOTAL: 2

# BYPASSED RECIPIENTS

**The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.**

NONE

# NOTICE CERTIFICATION

**I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Jun 20, 2024 Signature: /s/Gustava Winters

---

# CM/ECF NOTICE OF ELECTRONIC FILING

**The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on June 18, 2024 at the address(es) listed below:**

| Name | Email Address |
|---|---|
| Allan B Diamond | on behalf of Counter-Defendant Leif M. Clark Trustee of the Edgemere Litigation Trust adiamond@diamondmccarthy.com |
| Allan B Diamond | on behalf of Trustee Leif M. Clark Trustee of the Edgemere Litigation Trust adiamond@diamondmccarthy.com |

Allan B Diamond
on behalf of Plaintiff Leif M. Clark Trustee of the Edgemere Litigation Trust adiamond@diamondmccarthy.com

Christopher D. Johnson
on behalf of Trustee Leif M. Clark Trustee of the Edgemere Litigation Trust chris.johnson@diamondmccarthy.com, nan.sauter@diamondmccarthy.com

Christopher D. Johnson
on behalf of Plaintiff Leif M. Clark Trustee of the Edgemere Litigation Trust chris.johnson@diamondmccarthy.com, nan.sauter@diamondmccarthy.com

Christopher D. Johnson
on behalf of Counter-Defendant Leif M. Clark Trustee of the Edgemere Litigation Trust chris.johnson@diamondmccarthy.com, nan.sauter@diamondmccarthy.com

Eric E. Walker
on behalf of Interested Party The Point Group ewalker@cooley.com efilingnotice@cooley.com;efiling-notice@ecf.pacerpro.com;diane.young@cooley.com;srabuck@cooley.com

Eric E. Walker
on behalf of Interested Party Eddie Fenoglio ewalker@cooley.com efilingnotice@cooley.com;efiling-notice@ecf.pacerpro.com;diane.young@cooley.com;srabuck@cooley.com

Eric E. Walker
on behalf of Interested Party Lifespace Communities Inc. ewalker@cooley.com, efilingnotice@cooley.com;efiling-notice@ecf.pacerpro.com;diane.young@cooley.com;srabuck@cooley.com

Frasher Murphy
on behalf of Interested Party UMB Bank N.A. frasher.murphy@haynesboone.com, kim.morzak@haynesboone.com

J. Gregory Taylor
on behalf of Trustee Leif M. Clark Trustee of the Edgemere Litigation Trust gtaylor@diamondmccarthy.com, cburrow@diamondmccarthy.com

J. Gregory Taylor
on behalf of Plaintiff Leif M. Clark Trustee of the Edgemere Litigation Trust gtaylor@diamondmccarthy.com, cburrow@diamondmccarthy.com

J. Gregory Taylor
on behalf of Counter-Defendant Leif M. Clark Trustee of the Edgemere Litigation Trust gtaylor@diamondmccarthy.com, cburrow@diamondmccarthy.com

James P. Muenker
on behalf of Interested Party Lifespace Communities Inc. james.muenker@us.dlapiper.com, james-muenker-0904@ecf.pacerpro.com

Jeremy Heath Coffman
on behalf of Interested Party Lane Gorman Trubitt LLC hcoffman@belaw.com, apaez@belaw.com;ctucker@belaw.com;sroyall@belaw.com

John D. Penn
on behalf of Interested Party Lifespace Communities Inc. jpenn@perkinscoie.com, docketdal@perkinscoie.com;john--penn-1853@ecf.pacerpro.com

Mark C. Moore
on behalf of Creditor Committee Official Committee of Unsecured Creditors mmoore@foley.com mark-moore-8735@ecf.pacerpro.com;roxana.gutierrez@foley.com

Michael Scott Held
on behalf of Counter-Claimant Kong Capital LLC mheld@jw.com, kgradney@jw.com;osalvatierra@jw.com

Michael Scott Held
on behalf of Defendant Intercity Investment Properties Inc. mheld@jw.com, kgradney@jw.com;osalvatierra@jw.com

Michael Scott Held
on behalf of Counter-Claimant Intercity Investment Properties Inc. mheld@jw.com, kgradney@jw.com;osalvatierra@jw.com

Ryan C Hardy
on behalf of Counter-Claimant Kong Capital LLC rhardy@lplegal.com, nbailey@lplegal.com;druiz@lplegal.com;kpatton@lplegal.com;ikropiewnicka@lplegal.com

Ryan C Hardy
on behalf of Defendant Intercity Investment Properties Inc. rhardy@lplegal.com, nbailey@lplegal.com;druiz@lplegal.com;kpatton@lplegal.com;ikropiewnicka@lplegal.com

Stephen A. McCartin
on behalf of Creditor Committee Official Committee of Unsecured Creditors smccartin@foley.com steve-mccartin-3861@ecf.pacerpro.com;jcharrison@foley.com;stephanie.jackson@foley.com

Stephen T Loden
on behalf of Plaintiff Leif M. Clark Trustee of the Edgemere Litigation Trust sloden@diamondmccarthy.com, cburrow@diamondmccarthy.com

Stephen T Loden
on behalf of Counter-Defendant Leif M. Clark Trustee of the Edgemere Litigation Trust sloden@diamondmccarthy.com, cburrow@diamondmccarthy.com

Thomas C. Scannell
on behalf of Creditor Committee Official Committee of Unsecured Creditors tscannell@foley.com acordero@foley.com;thomas-scannell-3441@ecf.pacerpro.com

TOTAL: 26