

Dated: June 30, 2011



1 Christopher H. Bayley (#010764)  
Benjamin W. Reeves (#025708)  
2 SNELL & WILMER L.L.P.  
One Arizona Center  
3 400 E. Van Buren  
Phoenix, AZ 85004-2202  
4 Telephone: (602) 382-6506  
Facsimile: (602) 382-6070  
5 [cbayley@swlaw.com](mailto:cbayley@swlaw.com)  
[breeves@swlaw.com](mailto:breeves@swlaw.com)  
6 Attorneys for NFPS, Inc.

*Sarah S. Curley*

Sarah S. Curley, Bankruptcy Judge

7 IN THE UNITED STATES BANKRUPTCY COURT  
8 FOR THE DISTRICT OF ARIZONA

9  
10 In Re:  
11 COR D'AMOR, LLC,  
12 Debtor.

Proceedings Under Chapter 11  
Case No. 2:10-bk-21160-SSC  
Adv. No. 2:11-ap-00082-SSC

13  
14  
15 NFPS, Inc., a Delaware corporation,  
16 Plaintiff,

**STIPULATED FINDINGS OF FACT  
AND ORDER CONCERNING  
SETTLEMENT OF ADVERSARY  
CASE**

17 v.  
18 COR D'AMOR, LLC, an Arizona limited  
liability company; CLEMENT  
19 ANDERSON, an individual; JANE DOE  
ANDERSON, an individual;  
20 CHRISTOPHER PREISEL, an  
individual; JANE DOE PREISEL, an  
21 individual; SEDONA STARS, LLC, an  
Arizona limited liability company;  
22 UNKNOWN PARTIES IN INTEREST,  
23 Defendants.

Date:  
Time:  
Place: United States Bankruptcy Court  
230 N. First Ave., Room 701  
Phoenix, AZ 85003

Related DE:

24 Upon consideration of the "Stipulated Motion to Approve Settlement"  
25 ("Stipulation"), filed by NFPS, Inc., the assignee of Wachovia Bank, N.A., Cor D'Amor,  
26 LLC, Clement Anderson, Christopher Preisel and Rosemary Preisel aka Jane Doe Preisel,  
27 and Sedona Stars, LLC, and the entire record before the Court, the Court rules as follows:  
28

13130717

1           **THE COURT FINDS** that:

2           1.       On December 7, 2009, Sedona Stars filed a Voluntary Petition for Chapter  
3       11 Bankruptcy in the U.S. Bankruptcy Court for the District of Arizona as Case No. 2:09-  
4       bk-31481-SSC (the “Sedona Stars Bankruptcy”).

5           2.       On July 7, 2010, CDA filed a Voluntary Petition for Chapter 11 Bankruptcy  
6       in the U.S. Bankruptcy Court for the District of Arizona as Case No. 2:10-bk-21160-CGC  
7       (the “CDA Bankruptcy”).

8           3.       On or about January 12, 2011, NFPS filed a “Verified Complaint For: (1)  
9       Quiet Title; (2) Wrongful Lis Pendens; (3) Violation of 28 U.S.C. § 152; (4) Violation of  
10      28 U.S.C. § 157; (5) For Injunction; and (6) Determination of the Validity, Priority, and  
11      Extent of Liens” (the “Adversary Complaint”) in the U.S. Bankruptcy Court for the  
12      District of Arizona against Cor D’ Amor, LLC (“CDA”), Sedona Stars, Clement  
13      Anderson (“Anderson”), and Chris Preisel and Rosemary E. Preisel (collectively, the  
14      “Preisels”), in Adv. No. 2:11-ap-00082 (the “Adversary Proceeding”). Sedona Stars,  
15      CDA, Anderson, and the Preisels are sometimes collectively referred to as the “Debtor  
16      Parties.”

17          4.       The Settlement Agreement is fair and equitable to the Debtor and represents  
18      a reasonable exercise of the Debtor’s business judgment.

19          5.       Sedona Stars is the record owner of Tracts A & B<sup>1</sup>, by virtue of the  
20      Corporate Warranty Deed executed by the Cor D’ Amor Homeowners Association (the  
21      “Association”) on or about June 26, 2009.

22          6.       Sedona Stars is the current Declarant under the “Amended and Restated  
23      Declaration of Covenants, Conditions, Restrictions and Easements for Cor D’Amor  
24      Subdivision” dated April 9, 2007 and recorded in the Office of the County Recorder of  
25      Yavapai County, Arizona, on April 16, 2007, at Instrument No. 4127696, Book 4498,  
26      page 327 (the “Cor D’Amor CC&Rs”).

27  
28      <sup>1</sup>       Unless otherwise defined herein or required by context, the capitalized terms used  
herein shall have the same meaning ascribed to them in the Settlement Agreement.

1           7. Chris Preisel has represented and warranted that he is the sole managing  
2 member of CDA and that CDA is the sole member of Sedona Stars and, further, that he is  
3 authorized to execute the Settlement Agreement and take such actions are set forth therein  
4 and required thereunder.

5           8. The proposed Settlement Agreement have been duly and properly served on  
6 and noticed to all persons and entities entitled to notice.

7           9. Debtor Sedona Stars has separately filed the Dismissal Motion concerning  
8 the Sedona Stars Bankruptcy. Upon the Court's entry of this Order, any objections to the  
9 Dismissal Motion, including the objection filed by NFPS, will be deemed withdrawn.  
10 Once the Debtor Parties have complied with all of the terms and conditions of the  
11 Settlement Agreement and this Order, including without limitation, the execution of the  
12 Special Warranty Deed, Assignment and Consent (all of which are defined below), and  
13 First American Title Insurance Company has closed escrow number NCS-455858-PHX1  
14 (the "Escrow"), the Debtor will lodge a separate order granting the Dismissal Motion and  
15 dismissing the Sedona Stars Bankruptcy.

16           10. Pursuant to the Settlement Agreement, and as a condition to the dismissal of  
17 the CDA Bankruptcy, the Bank, Sedona Stars, CDA, Anderson and the Preisels have  
18 agreed to, among other things, the following:

19           (a) Transfer of Tracts A & B. Upon final Court approval of the  
20 Settlement Agreement, Sedona Stars shall execute and deliver to the Bank  
21 that certain "Special Warranty Deed" in the form attached to the Settlement  
22 Agreement as Exhibit "A" (the "Special Warranty Deed"). The Special  
23 Warranty Deed shall transfer Tracts A & B to the Association. Bank, or its  
24 agent, transferee or assign, may take any and all steps necessary to  
25 effectuate and record the transfer of Tracts A & B, and the Debtor Parties  
26 agree to cooperate in the transfer of Tracts A & B and to sign any additional  
27 documents necessary to effectuate the transfer, including any other  
28

1 documentation prepared by First American Title Company in and for the  
2 Escrow.

3 (b) Assignment of Declarant Rights. Upon final Court approval of the  
4 Settlement Agreement, Sedona Stars shall execute and deliver to the Bank  
5 that certain “Assignment of Declarant Rights Under Amended and Restated  
6 Declaration of Covenants, Conditions, Restrictions and Easements for Cor  
7 D’Amor Subdivision” in the form attached to the Settlement Agreement as  
8 Exhibit “B” (the “Assignment”) to unconditionally assign all of the  
9 declarant rights under the CC&R’s to NFPS. Bank may take any and all  
10 steps necessary to effectuate the assignment of the declarant rights, and the  
11 Debtor Parties agree to cooperate in the assignment of the declarant rights  
12 and to sign any additional documents necessary to effectuate the transfer.

13 (c) A.R.S. § 10-3704 Consent of Debtor Parties. Upon final Court  
14 approval of the Settlement Agreement, Debtor Parties shall cause Cor  
15 D’Amor II, LLC to execute and deliver to the Bank that certain “Unanimous  
16 Written Consent of the Members of Cor D’Amor Homeowners Association,  
17 Inc.” in the form attached to the Settlement Agreement as Exhibit “C” (the  
18 “Consent”) to consent to the removal of existing directors and officers of the  
19 Association and election of Chad Kolodisner, David Goldstein, and Ken  
20 Abrahams as members of the board of directors of the Association. Bank  
21 may take any and all steps necessary to effectuate the removal and election  
22 of board members, and the Debtor Parties agree to cooperate in the process  
23 and to sign any additional documents necessary to effectuate the transition.

24 Based on the forgoing Findings of Fact, and the entire record in this matter, **IT IS**  
25 **HEREBY ORDERED, ADJUDGED AND DECREED** that:

- 26 A. The Settlement Agreement is approved and ratified in its entirety;  
27 B. Entry of this Order makes valid and enforceable each provision of the  
28 Settlement agreement in accordance with its terms;

1 C. The Debtor Parties are authorized and directed to do any acts and to execute  
2 any documents necessary and appropriate to implement and carry out the terms and intent  
3 of the Settlement Agreement;

4 D. The Court shall retain jurisdiction to the extent necessary to enforce and  
5 implement the terms of the Settlement Agreement;

6 E. First American Title Insurance Company is authorized to close the Escrow.

7 F. The Stipulation is GRANTED and approved in its entirety;

8 G. Upon the Court's entry of this Order, any objections to the Dismissal  
9 Motion, including the objection filed by NFPS, is hereby deemed withdrawn. Upon the  
10 Debtor Parties' compliance with all of the terms and conditions of the Settlement  
11 Agreement and this Order, including without limitation, the execution of the Special  
12 Warranty Deed, Assignment and Consent, and First American Title Insurance Company  
13 has closed the Escrow, the Debtor will lodge a separate order granting the Dismissal  
14 Motion and dismissing the CDA Bankruptcy; and

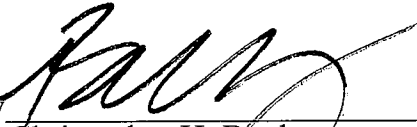
15 H. Upon the Debtor Parties performance of all requirements set forth in the  
16 Settlement Agreement and this Order to Bank's satisfaction, and following the close of  
17 Escrow, the Bank shall lodge with the Court a separate order to dismiss the Adversary  
18 Proceeding, with prejudice, as to the Debtor Parties.

19 DATED AND SIGNED ABOVE BY THE COURT.

20 STIPULATED AS TO FORM AND CONTENT BY:

21 **"THE BANK"**

22 SNELL & WILMER L.L.P.

23  
24  
25 By   
26 Christopher H. Bayley  
27 Benjamin W. Reeves  
28 One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2202  
Attorneys for NFPS, Inc.

**"DEBTOR PARTIES"**

**SEDONA STARS, LLC**, an Arizona limited liability company

By: Cor D'Amor, LLC, a Delaware limited liability company  
Its: Sole Member

By: *Christopher W. Preisel*  
Name: Christopher Preisel  
Title: Sole Managing Member

**COR D'AMOR, LLC**, a Delaware limited liability company

By: *Christopher W. Preisel*  
Name: Christopher Preisel  
Title: Sole Managing Member

**PREISELS**

*Christopher W. Preisel*  
Christopher Preisel

*Rosemary Preisel*  
Rosemary Preisel

**ANDERSON**

Clement Anderson

**Snell & Wilmer**  
LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**“DEBTOR PARTIES”**

**SEDONA STARS, LLC**, an Arizona limited liability company

By: Cor D’Amor, LLC, a Delaware limited liability company  
Its: Sole Member

By: \_\_\_\_\_  
Name: Christopher Preisel  
Title: Sole Managing Member

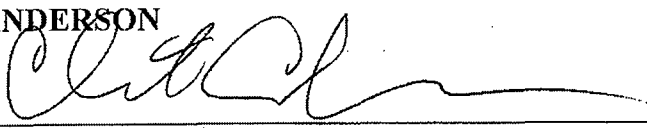
**COR D’AMOR, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Christopher Preisel  
Title: Sole Managing Member

**PREISELS**

\_\_\_\_\_  
Christopher Preisel

\_\_\_\_\_  
Rosemary Preisel

**ANDERSON**  
  
\_\_\_\_\_  
Clement Anderson