

FIDELITY NATIONAL TITLE INSURANCE COMPANY, LAWYERS TITLE INSURANCE CORPORATION, COMMONWEALTH LAND TITLE INSURANCE COMPANY, TRANSNATION TITLE INSURANCE COMPANY, ALAMO TITLE INSURANCE; CHICAGO TITLE AND TRUST COMPANY; TICOR TITLE INSURANCE COMPANY OF FLORIDA; SECURITY UNION TITLE INSURANCE COMPANY; AND FIRST AMERICAN TITLE INSURANCE COMPANY.

Plaintiffs,

vs.

FONTAINEBLEAU RESORTS, LLC; TURNBERRY WEST CONSTRUCTION, INC., AND TURNBERRY RESIDENTIAL LIMITED PARTNER, L.P.

Defendant.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Complex Business Litigation Division
Case No. 09- 75602 -CA-40

ORDER DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNT I AGAINST DEFENDANT FONTAINEBLEAU RESORTS LLC

THIS MATTER came before the Court on the Plaintiffs' Motion for Partial Summary Judgment as to Count I (Breach of Contract) as to Defendant Fontainebleau Resorts, LLC, and the Court having reviewed the file, the motion, memoranda, hearing argument of counsel, reviewing the transcript thereof and the case law thereon, and being otherwise fully advised in the premises, it is

ORDERED and **ADJUDGED** that the Motion directed solely to Fontainebleau Resorts, LLC, one of the named Class A indemnitors herein, is **DENIED**. The Court determines:


1. Questions of genuine issues of material fact remain unresolved;
2. Discovery is not complete in this matter.
3. The Plaintiff has failed to overcome Defendant's affirmative defenses;

4. The Supreme Court of Nevada has yet to rule on the certified issues presented to it by the Bankruptcy Court. This Court is advised that an en banc Nevada Supreme Court recently ruled that it is bound by the certification order and complaint presented to it and has stricken the respondents' appendix filed to contradict same. The Court further notes that by way of footnote the Bankruptcy Court has been advised it may amend its certification order and provide a hearing transcript for matters addressed subsequent to the certification order. *See: Fontainebleau Las Vegas Holdings, LLC v Wilmington Trust FSB* 2011 WL 6842517 (Nev.)
5. The holding of the Nevada Supreme Court in relation to the matters before it will substantially impact any ruling emanating from this Court;
6. While the undersigned Judge has withheld ruling in this matter pending a ruling from the Nevada Supreme Court, the undersigned is leaving the complex business litigation division and a successor Judge will be addressing the claims raised in the instant lawsuit; it is accordingly

ORDERED and **ADJUDGED** that the Plaintiffs' Motion for Summary Judgment as to Liability on Count I, Breach of Contract is **DENIED** as premature and without prejudice to be re-raised at a later time.

25th **DONE** and **ORDERED** in Chambers at Miami, Miami-Dade County, Florida, on this day of January, 2012.

cc: Counsel / Parties of record


GILL S. FREEMAN
CIRCUIT COURT JUDGE

Conformed Copy

JAN 25 2012

Gill S. Freeman
Circuit Court Judge