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Fontainebleau Reaches $115M Deal With Resort Investors

By **Cara Salvatore**

Law360, New York (February 26, 2015, 12:51 PM ET) -- The failed $2.9 billion Fontainebleau Resort and Casino in Las Vegas has reached a $115 million settlement with investors who say the company kept two sets of books to doctor construction costs, according to lawyers for the plaintiffs.

The settlement was approved by a Las Vegas county judge on Tuesday, and a hearing will be held Thursday, according to the case docket. A jury trial had been slated for Aug. 11. Court documents were not immediately available.

In the suit, launched in Nevada state court in 2009, the term lenders, including Brigade Leveraged Capital Structures Fund Ltd. and Avenue CLO Fund Ltd., claimed they were fraudulently induced to loan more than $1 billion to the project.

The term lenders alleged that Fontainebleau affiliates concealed that they had two sets of records: one showing the project to be millions of dollars short of cash and another fraudulently showing the project to be fully funded.

The Fontainebleau was envisioned as a $2.9 billion, 3,815-room resort with a 100,000-square-foot casino. In 2005, BofA loaned $150 million to project developer Fontainebleau Las Vegas Holdings LLC, and in 2007 the bank gave another $1.85 billion for construction financing.

But declining revenue projections, lackluster condominium sales, cost overruns and the September 2008 bankruptcy of Lehman Brothers Holdings Inc., a major lender, drove the project's developer into bankruptcy in June 2009.

In January, a Florida bankruptcy judge indicated he would sign off on a revised settlement ending litigation brought by the trustee for the project against the company's directors and officers, bringing the estate one step closer to exiting Chapter 7.

U.S. Bankruptcy Judge A. Jay Cristol said he would approve the settlement after hearing that a controversial provision barring litigation against the directors and officers of the Fontainebleau, who allegedly allowed the Las Vegas resort and casino project to fail, had been removed from the deal.

Under the terms of that deal, the insurers of the directors and officers would pay the estate $25 million, while real estate mogul Jeffrey Soffer, a principal in the project, would pay $2.5 million into the estate.

Soffer and other parties related to him also agreed to waive $675 million in claims they had asserted against the estate, according to the settlement.

In a separate deal, Soffer and the directors and officers of the company agreed to pay the term lenders $98 million, of which $93 million will come from D&O insurance and $5 million will be paid by Soffer. The settlement ends pending litigation brought by the term lenders in Nevada.

The project was sold through the bankruptcy court to Icahn Nevada Gaming Acquisition for about $156 million in 2010.

Soffer is represented by Steve Morris of Morris Law Group.

The plaintiffs are represented by Mike Hennigan and Kirk Dillman of McKool Smith LLP.

Counsel information for the defendants was not immediately available.

The case is Brigade Leveraged Capital Structures Fund Ltd. et al. v. Fontainebleau Resorts LLC et al., case number A-11-637835-B, in the Clark County District Court, Nevada.

--Additional reporting by Carolina Bolado. Editing by Rebecca Flanagan.
