

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 07 CVS 009006

STATE OF NORTH CAROLINA ex rel.)
ROY COOPER, Attorney General,)
)
Plaintiff,)
)
vs.)
)
PEERLESS REAL ESTATE SERVICES, L.L.C.,)
PEERLESS DEVELOPMENT GROUP,)
VILLAGE OF PENLAND, L.L.C., MFSL)
LANDHOLDINGS, L.L.C., COMMUNITIES OF)
PENLAND, L.L.C., COP LAND HOLDINGS,)
L.L.C., P.G.CAPITAL HOLDINGS, L.L.C.,)
ANTHONY PORTER, FRANK AMELUNG,)
RICHARD AMELUNG, J. KEVIN FOSTER,)
NEIL O'ROURKE, AND MICHAEL YEOMANS)
)
Defendants.)

CONSENT JUDGMENT AS
TO DEFENDANT RICHARD
AMELUNG

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WAKE COUNTY, C.S.C.
BY

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in Wake County for entry of a Consent Judgment at the joint request of Plaintiff State of North Carolina, by and through Attorney General Roy Cooper, Defendant Richard Amelung and Joseph W. Grier, III, the Court-appointed Receiver in this action (the "Receiver"), the Court, with the consent of Plaintiff, Richard Amelung, and the Receiver, makes the following:

FINDINGS OF FACT

1. Plaintiff is the State of North Carolina, acting on the relation of Roy Cooper, Attorney General, pursuant to authority granted in Chapters 75 and 114 of the General Statutes of North Carolina.
2. Defendant Richard Amelung is a resident of Florida and, along with other

individual defendants in this matter (the "Peerless Group"), Plaintiff alleges that he was involved with the operations of the corporate Defendants that sold parcels of real property in a development in Mitchell County, North Carolina.

3. The Receiver was appointed by order of this Court entered on June 6, 2007, ("Receivership Order") to serve as Receiver for Peerless Real Estate Services, Inc., Village of Penland, LLC, MFSL Landholdings, LLC, Communities of Penland, LLC, COP Land Holdings, LLC, PG Capital Holdings, LLC, and West Side Development, LLC. Although not a party to this action, the Receiver has determined that it is in the best interest of the Receivership for the Receiver to enter into this Consent Judgment with Defendant Richard Amelung.

4. Defendant Richard Amelung filed a Chapter 7 bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Florida on July 13, 2007. Michael Bakst was appointed Trustee in that matter. With the consent of Defendant Richard Amelung, the State, the Receiver, and the Trustee, the Bankruptcy Court entered an order authorizing the entry of this Consent Judgment. A true and accurate copy of the Bankruptcy Court Order is attached as Exhibit 1 and incorporated by reference.

5. Plaintiff alleges the following:

(a) Around 2002, the Peerless Group began developing a project known as the Village of Penland on a 1200 to 1400 acre tract of real property in Mitchell County, North Carolina. Additional property was added to the development over time, and the property was subdivided into more than 2000 residential lots;

(b) The Peerless Group organized the lots within the Village of Penland into multiple smaller subdivisions, each purportedly operated by a different corporate entity but under

a common promotional plan. The Peerless Group never registered the development with the United States Department of Housing and Urban Development pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701, *et seq.*, and consequently, purchasers did not receive the property report (15 U.S.C. § 1707) nor the right of cancellation (15 U.S.C. § 1703(b)) required by the Interstate Land Sales Full Disclosure Act;

(c) Prior to engaging in sales to the public, the Peerless Group conducted bogus sales to insiders at inflated prices, enabling one or more appraisers to use the insider sales as comparables to support subsequent appraisals at the inflated prices;

(d) Consumers were told that the Peerless Group would use the funds obtained from the consumer's loans to develop the Village of Penland project. Consumers also were typically told, among other things, that:

- i. they could buy multiple lots, usually somewhere between 2 and 20;
- ii. they would not have to pay any of their own money in the purchase;
- iii. an employee of the Peerless Group would assist the consumers in applying for mortgage loans;
- iv. the Peerless Group would provide the consumer with an option contract requiring the Peerless Group to repurchase each lot within a certain period of time, guaranteeing the consumers a profit; and
- v. the option contracts would be secured by personal guarantees from various members of the Peerless Group;

(e) To further convince consumers that their investments were safe, some

members of the Peerless Group gave consumers copies of what was reported to be their United States income tax returns and financial statements that overstated the net worth of such members of the Peerless Group;

(f) The lots, some of which were only .14 acre in size, had no water or sewer on site at the time of the sale and many were too small to sustain septic tank systems. The selling price generally was \$125,000 per lot, regardless of the size or whether, due to topography, a home could reasonably be built on the lot;

(g) The Peerless Group had the majority of consumers complete multiple loan applications and told the consumers that the employees would “shop” the applications around with several lenders to obtain the best rates for the consumers. The applications did not disclose that consumers were, in the same time period, applying for and receiving loans from other lenders to purchase additional lots. The consumers almost never dealt directly with the lenders because the Peerless Group generally handled contact with the lenders;

(h) The closings on the lot purchases were primarily handled by an attorney who worked exclusively or almost exclusively for the Peerless Group. Some consumers gave a power of attorney to the closing attorney so he could sign the documents on behalf of the consumer. Most consumers never met the attorney in person;

(i) The HUD-1 Closing Statements for these transactions reflected purported earnest money deposits and/or down payments, but such earnest money deposits and/or down payments were not paid by the consumers and were illusory;

(j) For the most part, the money the Peerless Group received from consumers was not used to develop the project, as promised, but was instead used for other unrelated

purposes. Eventually, the Peerless Group notified consumers that they would be unable to fulfill their obligations to consumers, leaving consumers with mortgages on property that was in many instances unbuildable and in all instances worth only a fraction of the purchase price; and

(k) Defendant Richard Amelung's alleged unfair or deceptive business practices as part of the Peerless Group were in or affecting commerce in North Carolina.

6. Defendant Richard Amelung denies the Plaintiff's allegations in Paragraphs 2 and 5. Although Defendant Amelung does not object to the entry of this Consent Judgment, he enters into this consent judgment and agrees to its terms only as a means of resolving this case, in order to avoid the uncertainties and costs of litigation.

7. Defendant Richard Amelung has provided financial information through his bankruptcy schedules and other filings and warrants that the financial information, including values, he provided is true and accurate and fully and fairly reflects his financial condition as of the date reflected on the schedules and other filings.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter.
2. Entry of this Judgment is just and proper.
3. The Complaint states a cause of action against Defendant Richard Amelung pursuant to N.C.G.S. § 75-1.1 in connection with his involvement in the development, marketing, and sale of real property in North Carolina, and the Court finds good and sufficient cause to adopt the agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for the entry of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendant Richard Amelung is permanently enjoined from engaging, either directly or indirectly through agents, representatives, or assigns, in the development, marketing, and sale of real property in North Carolina in which:

- (a) any appraisal intended to deceive prospective lenders or purchasers, or any appraisal that is prepared in a manner that does not conform to the Uniform Standards of Professional Appraisal Practice is provided to a prospective lender or purchaser;
- (b) insider sales are used to artificially inflate the value of the real property and such values are used to support appraisals performed on the real property sold;
- (c) the seller or any related entity provides second mortgages or promissory notes to purchasers in connection with the sale of real property;
- (d) the down payment for the purchase of real property is not accurately disclosed on the HUD-1 Closing Statement;
- (e) any subdivision, if required by law, is not registered with the United States Department of Housing and Urban Development pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701, *et seq.*;
- (f) sales incentives with a value of more than \$100 are offered to purchasers; provided, however, that this provision does not apply to payment by the seller of closing costs as long as that fact is fully disclosed to any lender extending credit on the sale and on the HUD-1 Closing Statement;
- (g) purchasers are offered sale-leaseback or option contracts for the lease or

repurchase of the property by the seller or the seller's agent;

- (h) the seller or any individual or entity related to the seller or the seller's agent offers the purchaser the opportunity to postpone one or more mortgage or promissory note payments on the property;
- (i) the seller or any individual or entity related to the seller or the seller's agent agrees to make one or more mortgage or promissory note payments for the purchaser;
- and
- (j) the seller or any individual or entity related to the seller or the seller's agent loans the purchaser any portion of the down payment on the purchase.

2. Prior to the entry of this Consent Judgment, Defendant Richard Amelung shall direct Chubb Insurance, the insurer on an officer and director insurance policy which provides insurance coverage to Defendant in this matter, to pay the remaining amount of insurance proceeds benefitting Defendant to the Receiver. The Receiver may put these funds to such uses allowed by the Receivership Order or as approved by this Court.

3. To the extent Defendant Richard Amelung failed to disclose in his bankruptcy schedules and statement of financial affairs, filed in case number 07-15493-BKC-PGH, in the United States Bankruptcy Court for the Southern District of Florida, as such schedules and statement of financial affairs have been amended through (date of the entry of this order), any material asset in which Defendant Richard Amelung held an interest as of July 13, 2007, the date of the filing of the his bankruptcy petition ("Undisclosed Asset"), then the State of North Carolina and the Receiver may execute against the Undisclosed Asset or against assets that constitute the proceeds of, were derived from, or are otherwise traceable to the Undisclosed

Asset. The State of North Carolina and the Receiver may establish the existence of an Undisclosed Asset through one or more affidavits. In the event the State of North Carolina or the Receiver discover and execute against an Undisclosed Asset or its proceeds, the State of North Carolina or the Receiver shall give notice of such discovery and execution to the debtor and to the Trustee in Defendant Richard Amelung's bankruptcy case and, upon the request of the Trustee, consent to administration of the Undisclosed Asset or its proceeds by the Trustee pursuant to the provisions of the Bankruptcy Code. For the purposes of this Consent Judgment (but not for purposes of distribution in the debtor's bankruptcy case), the obligation of the debtor to the State of North Carolina and the Receiver is unlimited.

4. This Consent Judgment shall not affect the rights of any private party to pursue any remedy or remedies allowed pursuant to the laws of the State of North Carolina. However, this Consent Judgment is only effective between Plaintiff and Defendant for the purpose of resolving this case. It shall not be admissible as evidence for any purpose in any other civil or criminal action.

5. This Consent Judgment Agreement shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

6. Defendant Richard Amelung shall cooperate with Plaintiff and the Receiver by providing any information Plaintiff or the Receiver requests to assist in the investigation or litigation of Plaintiff's and the Receiver's claims in this matter as to the other Defendants.

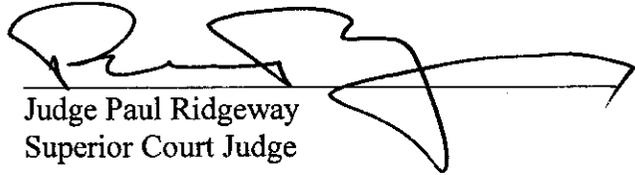
IT IS FURTHER ORDERED THAT

7. If any part of the financial information or tax returns provided to Plaintiff by defendant Richard Amelung is false, unfair, deceptive, misleading, or inaccurate in any material

respect, Plaintiff, in its sole discretion, may:

- (a) move the Court to impose sanctions;
- (b) move the Court to rescind this Consent Judgment and proceed on its original Complaint; and
- (c) seek any other remedy or relief afforded by law or equity, including but not limited to the entry of a monetary judgment.

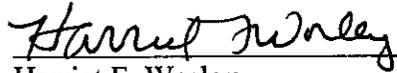
This the 8 day of March, 2009.



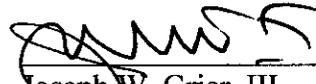
Judge Paul Ridgeway
Superior Court Judge

WE CONSENT:

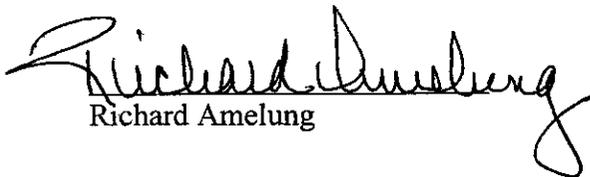
STATE OF NORTH CAROLINA
ex rel. ROY COOPER,
Attorney General



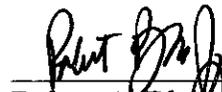
Harriet F. Worley
Assistant Attorney General



Joseph W. Grier, III,
Receiver of Peerless Real Estate Services,
Inc., Village of Penland, LLC, MFSL
Landholdings, LLC, Communities of
Penland, LLC, COP Land Holdings, LLC,
PG Capital Holdings, LLC, and West Side
Development, LLC



Richard Amelung



Robert A. Blake, Jr.
Counsel for Richard Amelung



ORDERED in the Southern District of Florida on February 25, 2010.

Paul G. Hyman, Chief Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov**

**CASE NO.: 07-15493 -BKC-PGH
Chapter 7**

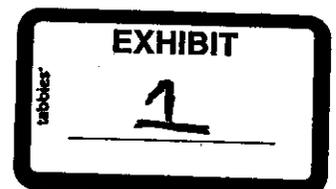
In Re:

AMELUNG, RICHARD L.,

Debtor(s).

**ORDER GRANTING MOTION TO AUTHORIZE ENTRY OF CONSENT
JUDGMENT AS TO RICHARD AMELUNG IN THE WAKE COUNTY, NORTH
CAROLINA, SUPERIOR COURT**

THIS MATTER having come before the court in West Palm Beach, Florida, upon the *Motion To Authorize Entry Of Consent Judgment As To Richard L. Amelung In The Wake County, North Carolina, Superior Court* (the "Motion") filed by the State of North Carolina, ex rel. Roy Cooper, Attorney General and by Joseph W. Grier, III, Receiver for Peerless Real Estate Services, Inc., Village of Penland, LLC, MFSL Landholdings, LLC, Communities of Penland, LLC, COP Landholdings, LLC, PG Capital Holdings, LLC and West Side Development, LLC (the "Movants"). The court having received the Movants'



Certificate of No Response, the court having noted that the Movants complied with Local Rule 9013-1(D), the court having noted that no objections have been timely served or filed to the Motion, and the court being otherwise fully advised in the premises, it is,

ORDERED And ADJUDGED as follows:

1. The Motion is **GRANTED**.
2. The court finds that all creditors have been duly and properly noticed of the Motion.
3. The court hereby authorizes the entry by the Wake County, North Carolina, Superior Court of the Consent Judgment, a copy of which is attached hereto as Exhibit A, for which the court finds good cause.

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Submitted by:

Joseph W. Grier, III
101 N. Tryon Street, Suite 1240
Charlotte, NC 28246
Telephone 704 332-0201
Fax 704 332-0215
Email jgrier@grierlaw.com

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case:

- Michael R Bakst efilemrb@ruden.com,
FL65@ecfcbis.com; Efile2557@ruden.com; Efile2556@ruden.com
- Michael R. Bakst efile2565@ruden.com,
efile2558@ruden.com; FL65@ecfcbis.com
- Andrew M Brumby abrumby@shutts-law.com
- David A Carter dacpa@bellsouth.net, dacpa2@bellsouth.net
- Robert C Furr bnasralla@furrcohen.com
- Mariaelena Gayo-Guitian mguitian@gjb-law.com, cbucolo@gjb-law.com; gjbecf@gjb-law.com; vlambdin@gjb-law.com
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- Alvin S. Goldstein mmitchell@furrcohen.com
- Joseph W Grier jgrier@grierlaw.com, kbuffaloe@grierlaw.com

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- Roy M Hartman rhartman@sacherzelman.com
- Soneet R. Kapila msams@kapilaco.com
- Mark R King markking@mhsolaw.com, yolybrea@mhsolaw.com
- Mark R. King markking@mhsolaw.com
- Gerard M Kouri Jr. gmkouripa@bellsouth.net
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Heather L Ries efile2547@ruden.com,
efile2550@ruden.com; FL65@ecfcbis.com
- Heather L. Ries efile2547@ruden.com,
efile2550@ruden.com; FL65@ecfcbis.com
- Charles P Summerall csummerall@buistmoore.com
- Marika Tolz TolzECFmail@aol.com, mtolz@ecf.epiqsystems.com
- Seth P Traub traub@slk-law.com, khobolth@slk-law.com; sschember@slk-
law.com; rhowell@slk-law.com; halvarez@slk-law.com
- Leslie S White lwhite@rushmarshall.com
- Harriet F Worley hworley@ncdoj.gov
- John A Yanchunis jyanchunis@jameshoyer.com

Joseph W. Grier, III is directed to serve copies of this order on the parties listed and file a certificate of service.

Master Service List