


Below is an Order of the Court.



FRANK R. ALLEY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

ARLIE & COMPANY,

Debtor.

Case No. 10-60244-aer11

**ORDER FINALLY APPROVING
SECOND AMENDED DISCLOSURE
STATEMENT, APPROVING
COMPROMISES AND CONFIRMING
DEBTOR'S FOURTH AMENDED
PLAN OF REORGANIZATION**

Hearing

Date: April 15, 2011

Time: 10:00 a.m.

Place: United States Bankruptcy Court
405 E. 8th Avenue
Courtroom #6

Eugene, Oregon 97401

Judge: Honorable Frank R. Alley

THIS MATTER came before the Court at the above-referenced time and place upon consideration of *Debtor's Fourth Amended Plan of Reorganization (April 11, 2011)* (Docket No. 532) (the "Plan") and the *Debtor's Second Amended Disclosure Statement (February 14, 2011)* (Docket No. 449) (the "Disclosure Statement") relating to the Plan filed by Arlie & Company, the debtor and debtor in possession (the "Debtor"). By Order dated January 31, 2011, this Court

conditionally approved the first amended version of the Disclosure Statement, subject to the Court's consideration of possible objections.

Copies of the Plan, the Disclosure Statement, and other related materials were transmitted, and acceptances and rejections of the Plan were solicited from holders of Claims¹ and Interests entitled to vote on the Plan.

Thereafter, the Debtor filed its: *Revised Notice Of Debtor's Intent To Settle With Summit Bank* [Docket No. 525] describing its agreed plan treatment for Summit Bank (the "Summit Compromise"), *Revised Notice Of Debtor's Intent To Settle With Fifth Third Bank* [Docket No. 526] describing its compromise and agreed plan treatment with Fifth Third Bank (the "Fifth Third Compromise"), and its *Notice Of Debtor's Intent To Settle With Pioneer Asset Investment Limited* [Docket No. 527] describing its compromise and agreed plan treatment with Pioneer Asset Investment Limited (the "Pioneer Compromise"),

Although several parties objected to confirmation of earlier versions of the Plan, no objections to confirmation of the current version of the Plan remained pending when, pursuant to sections 1125, 1128 and 1129 of the Bankruptcy Code, the Court held a hearing to consider final approval of the Disclosure Statement and confirmation of the Plan on April 15, 2011 (the "Plan Confirmation Hearing").

Based upon the entire record of this chapter 11 case, including, without limitation, the *Declaration of John J. Musumeci in Support of Confirmation of Debtor's Third Amended Plan of Reorganization (April 1, 2011)* (Docket No. 516), the *Amended Summary of Acceptances and Rejections of the Plan* (Docket No. 533), the *Expedited Motion for (A) Final Approval of Second Amended Disclosure Statement, (B) Determination that Modifications to Plan Do Not Require Further Disclosure or Re-Solicitation, and (C) Entry of Order Confirming the Plan* (Docket No. 534), the *Declaration of John Musumeci Regarding Sale of West Lane Shopping Center and*

¹ Capitalized terms not defined herein shall have the meaning set forth in the Plan.

Adjoining Land (Docket No. 536), the *Declaration of Suzanne Arlie Regarding Commitment to Provide Cash Flow Line of Credit Facility* (Docket No. 537), the *Declaration of Scott Diehl Regarding Feasibility of Fourth Amended Plan of Reorganization (April 11, 2011)* (Docket No. 538) and the testimony of Scott Diehl upon cross-examination at the Plan Confirmation Hearing, this Court makes the following findings of fact and conclusions of law:

A. This Court has jurisdiction over this chapter 11 case pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this chapter 11 case and all proceedings herein in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b), and this Court has jurisdiction to enter a final order with respect thereto.

B. Due, timely, sufficient and adequate notice of the Disclosure Statement, Plan, the Plan Confirmation Hearing, and the deadlines for voting on and filing objections to the Disclosure Statement and the Plan have been given to all holders of Claims and Interests and other parties-in-interest in accordance with the Court's January 31, 2011 Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and all other applicable laws, rules and regulations.

C. The solicitation by the Debtor of votes accepting or rejecting the Plan was conducted in good faith and complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and other applicable laws, rules and regulations.

D. The Plan and the Debtor have complied with the applicable provisions of chapter 11 of the Bankruptcy Code, and the Plan has been proposed in good faith and not by any means forbidden by law.

E. Any payments made or promised by the Debtor or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to the case, have been fully disclosed to the Court and are reasonable or, if to be fixed after confirmation of the Plan, will be subject to the approval of the Court.

F. The Plan does not provide for any rate changes which are subject to the approval of any governmental regulatory commission.

G. Each holder of a Claim against the Debtor either has accepted the Plan or will receive, under the Plan, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on such date.

H. The Plan has been accepted in writing by all Classes of Claims and Interests, or such Classes are deemed to have accepted the Plan.

I. The Plan does not discriminate unfairly and is fair and equitable with respect to each Class of Claims or Interests.

J. The Plan complies with the requirements of section 1129(a)(9) of the Bankruptcy Code with respect to treatment of Administrative Expense Claims and Priority Claims.

K. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, except to the extent proposed in the Plan.

L. The Plan as implemented by the Order complies with the requirements of section 1129(a)(12) of the Bankruptcy Code with respect to quarterly fees payable to the United States Trustee.

M. The Debtor does not provide “retiree benefits” as that term is defined in section 1114 of the Bankruptcy Code.

N. The Debtor is not required to pay any “domestic support obligation” as that term is defined in section 101(14A) of the Bankruptcy Code.

O. The Debtor is not an individual and therefore section 1129(a)(15) of the Bankruptcy Code does not apply.

P. All transfers of property under the Plan are required to be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Q. During the Plan Confirmation Hearing, the Debtor agreed to make certain modifications to the Plan. Those modifications are set forth below. Such modifications do not adversely change the treatment of the Claim of any Creditor. The Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code.

R. All conditions to confirmation have been satisfied, including those relating to the Debtor's settlement with Umpqua Bank.

Based on the foregoing and the reasons stated on the record, and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Disclosure Statement is approved as containing adequate information within the meaning of section 1125(a)(1) of the Bankruptcy Code.
2. The plan treatment embodied in the Summit Compromise is approved as fair and reasonable. The compromise and agreed plan treatment embodied in the Fifth Third Compromise is approved as fair and reasonable. The compromise and agreed plan treatment embodied in the Pioneer Compromise is approved as fair and reasonable.
3. The Plan (a copy of which is attached hereto as **Exhibit A**), as modified by the modifications described in paragraphs 3 - 8 below, is hereby confirmed pursuant to the provisions of section 1129 of the Bankruptcy Code.
4. The third sentence of Section 4.12 of the Plan shall be modified such that it is replaced in its entirety with the following:

No post petition default interest or post petition contract rate of interest shall be paid on any General Unsecured Claim. Pre-petition default rate interest shall be paid on a General Unsecured Claim only to the extent that, as a matter of claims allowance, a creditor establishes a contractual right to receive it.

5. During the year following the Effective Date, the Reorganized Debtor shall defer in whole or in part, payment of the salaries for Suzanne Arlie and John Musumeci if the Chief Financial Officer for the Reorganized Debtor determines based upon his sole discretion, that current payment of such salary would unnecessarily impinge upon the projected cash flow of the company. Upon a restoration of projected liquidity, in the sole discretion of the Chief Financial Officer, any deferred salary shall be repaid and normal salary payments shall be resumed.

6. During the year immediately following the Effective Date, the Reorganized Debtor shall not pay or provide to either Suzanne Arlie or and John Musumeci (“Officers”), directly or indirectly, and neither of the Officers shall receive or be entitled to receive from the reorganized Debtor, directly or indirectly, any dividends, bonuses, or increases in salary (collectively, “Payments”) that in aggregate exceed 110% of their respective Officer’s salaries in effect as of the date of the Plan Confirmation Hearing, without providing the United States Trustee and all other parties in interest not less than 21-days prior written notice of the proposed Payment increase(s). To the extent that any objections to the proposed Payment increases are filed with the Court before the expiration of the notice period, the dispute shall be resolved by this Court. In the absence of any timely-filed objections, the proposed Payment increases shall be permitted.

7. Section 1.24 of the Plan is modified to state “Effective Date” means the first Business Day after the Confirmation Date immediately following the first day upon which all conditions to the occurrence of the Effective Date set forth in Article 11.2 of this Plan have been either satisfied or waived but in no event later than April 25, 2011, unless waived by Umpqua Bank. The reorganized Debtor shall be responsible for timely payment of fees incurred pursuant to 28 USC § 1930(a)(6) until the case is closed, converted, or dismissed. After confirmation, the reorganized Debtor shall deliver to the Office of the United States Trustee on or before the last day of the month following the end of any calendar quarter an aggregate disbursement schedule for the purpose of calculating the fee due under 28 USC § 1930(a)(6) for so long as the case remains open.

9. Except as otherwise provided in the Plan, all transfers of property of the Debtor's bankruptcy estate made pursuant to, in furtherance of, or in connection with the Plan shall be free and clear of all Claims, security interests, encumbrances and other interests of holders of Claims and Interests.

10. Pursuant to section 1146(c) of the Bankruptcy Code, the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan (including deeds, vehicle title certificates, bills of sale and assignments executed in connection with any disposition of assets contemplated by the Plan) shall not be subject to any stamp tax or similar tax imposed by any state or local law.

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Presented by:

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