



SO ORDERED,

*Edward Ellington*

Judge Edward Ellington  
United States Bankruptcy Judge  
Date Signed: January 26, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

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IN RE:

COMMUNITY HOME FINANCIAL  
SERVICES, INC.

Debtor

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Case No. 12-01703-EE

Chapter 11

AGREED ORDER RESOLVING OBJECTIONS TO FIRST AMENDED  
DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN OF LIQUIDATION OF THE  
ESTATE OF COMMUNITY HOME FINANCIAL SERVICES, INC. PROPOSED BY THE  
TRUSTEE, KRISTINA M. JOHNSON DATED AS OF MAY 15, 2015 [Dkt. NOS. 1080,  
1121, AND 1124]

There came on for the Court’s consideration the First Amended Disclosure Statement For The Chapter 11 Plan Of Liquidation Of The Estate Of Community Home Financial Services, Inc. Proposed By The Trustee, Kristina M. Johnson Dated As Of May 15, 2015 (“Amended Disclosure Statement”) [Dkt. #1080] filed by Kristina M. Johnson, Chapter 11 Trustee (“Trustee”) for the Estate of Community Home Financial Services, Inc. (“CHFS” or the “Debtor”) and the objections thereto filed by The Debt Exchange, Inc. (“DebtX”) [Dkt. #1121] and Edwards Family Partnership and Beher Holdings Trust (together, “EFB/BHT”) [Dkt.

#1124]. The Court, being fully advised in the premises, and having been advised that the objections have been resolved finds that the Amended Disclosure Statement should be approved as modified below.

IT IS, THEREFORE, ORDERED that the Amended Disclosure Statement is approved with an Addendum that contains substantially the information provided below:

DebtX contends that the Trustee should investigate and dismiss Adversary Proceeding No. 13-00104-EE, styled *Community Home Financial Services, Inc. and William D. Dickson v. Charles Edwards, M.D.; James Edwards; Edwards Family Partnership, LP; The Atkinson Trust, L.L.C.; and The Debt Exchange, Inc.*, The Trustee contends that said Adversary Proceeding should be assigned as provided in the Plan. Nothing herein prejudices any confirmation objections by DebtX or any rights, claims or defenses of the Trustee or DebtX with respect to the adversary proceeding or any other matter in this bankruptcy case or otherwise.

EFP and BHT contend that the First Amended Disclosure Statement is premature and improper because it fails to disclose that no plan can be approved until the threshold material issues of the Edwards Entities' status as secured creditors and any Estate interest in the Joint Venture Portfolios are resolved. The Trustee disagrees with their contention and asserts such issues may be addressed as a part of the confirmation process.

EFP and BHT contend that the First Amended Disclosure Statement cannot be approved because it fails to disclose that the "Meehan Affidavit," upon which the Trustee's RICO Complaint is based, is not an affidavit. Rather, EFP and BHT contend that the "Meehan Affidavit" is an unsworn statement, by a person outside the subpoena power of the United States, who is not subject to cross examination. EFP and BHT contend that by referring to Meehan's statement as an affidavit, the First Amended Disclosure Statement gives the false impression that it is admissible evidence of alleged criminal activity by Charles Edwards, who denies any such conduct. EFP and BHT rely on the district court in ruling on EFP and BHT's motion to dismiss the RICO complaint, in which it was stated: "Is it not plausible that Dr. Edwards' attempt to collect with a non-final ruling was less indicative of a criminal enterprise and more an effort, perhaps misguided, to retrieve funds he believes to be his without encumbrance of the Estate? Even bracketing that issue for a moment, it is unusual to charge him and his related entities with RICO violations where they are (by and large) the ultimate beneficiaries of the Trustee's work. Why would a Trustee ever be appointed to recover millions of dollars for a criminal enterprise?" EFP and BHT contend that the Meehan statement is inadmissible hearsay, presumably drafted by the Trustee in conjunction with her compensation of Mr. Meehan for the assistance he was providing to the Trustee. The Trustee disputes these allegations and contends that the district court ruling is presently irrelevant due to the RICO count having been dismissed without prejudice.

EFP and BHT contend that the First Amended Disclosure Statement cannot be approved because it fails to disclose that the "Meehan Affidavit" was obtained with Estate funds that were subject

to EFP and BHT's claims (i.e., funds that were alleged cash collateral or belonged to EFP and BHT under the joint venture agreements) without court authority. The Trustee disputes these contentions.

EFP and BHT contend that the First Amended Disclosure Statement fails to disclose the Trustee's irreconcilable conflict of interest between her status (and the status of her law firm) as an administrative claimant and her duties to the creditors of the Estate. The Trustee disputes these contentions.

EFP and BHT contend that the First Amended Disclosure Statement fails to disclose that the Trustee's conflict of interest resulted in a proposed plan that violates provisions of the Bankruptcy Code and thus cannot be confirmed under § 1129. Specifically, EFP/BHT contend that the proposed plan elevates all administrative claims (e.g., payment to the Trustee's law firm) to a position of priority ahead of Edwards Entities' secured claims, which is not allowed by the Bankruptcy Code. They further contend that in an effort to disguise what is afoot, the Trustee's first amended plan provides for a class of secured claims, but states that the secured claimants are "unknown." Furthermore, they contend that the plan separately classifies the Edwards Entities' claims, as if they are not secured claims, and makes the Edwards Entities' claims subordinate to the payment of administrative expenses – namely, payment of the Trustee's law firm. The Trustee disputes these contentions, except that the Trustee states that her First Amended Plan speaks for itself.

EFP and BHT contend that the First Amended Disclosure Statement fails to disclose that the Trustee is continuing to skirt the issue of the probable insolvency of the Estate by failing to address the merits of the frivolous adversary proceedings which were initiated by Dickson as a vehicle to retain in CHFS all collections on the CHFS Home Improvement Loan Portfolio and the Joint Venture Portfolios. EFP and BHT further contend that the Trustee should be required to stop holding the Estate's largest creditors in legal limbo. They also contend that proposing a plan which purports to dismiss the adversary proceedings if EFP and BHT will give up their rights as secured creditors and agree to subordinate their secured claims, is not a position. Finally, they contend the Trustee is wrongly attempting to leverage prolonged purported "uncertainty" (which she is causing) into improper subordination of claims to avoid taking the position mandated by the facts and the law – i.e., an acknowledgment of the validity of the Edwards Entities' secured claims. The Trustee disputes these contentions.

EFP and BHT contend that the First Amended Disclosure Statement fails to disclose that the first amended plan contains an unprecedented indemnity provision that would require EFP and BHT to indemnify the Trustee and her law firm, for any claims by any entity for the servicing of any loans during her tenure as trustee as a condition for any transfer of loans to EFP and BHT under the first amended plan. They contend that such treatment is not authorized by the Bankruptcy Code. Further, they contend that if the plan provided for an asset sale under §363, EFP and BHT would be entitled to credit bid and if successful, they would *not* be required to indemnify any party. The Trustee disputes these contentions and states that her First Amended Plan speaks for itself.

EFP and BHT contend that the First Amended Disclosure Statement fails to disclose that EFP and BHT have filed a motion to convert this case to Chapter 7 for cause including substantial or continuing loss to the Estate and the absence of a reasonable likelihood of rehabilitation (Doc. No. 1041). They further allege that the First Amended Disclosure Statement proposes a litigation/liquidation plan that is not a plan to rehabilitate the debtor and that as such, cause exists to convert this proceeding to Chapter 7. Other than the fact that EFP and BHT have filed a motion to convert, the Trustee disputes these contentions.

EFP and BHT contend that the First Amended Disclosure Statement provides for a plan that, if confirmed, gives the Trustee an additional \$500,000 of Estate funds to use without court approval to hire and pay professionals including her law firm. They also contend that such unprecedented control over property of the estate is not allowed under the Bankruptcy Code particularly where it deprives the creditors of their rights in the funds. The Trustee disputes these contentions and states that her First Amended Plan speaks for itself.

EFP and BHT contend that the First Amended Disclosure Statement proposes a plan that cannot be confirmed because it provides for a plan that takes \$500,000 of funds that are subject to EFP and BHT's claims and sets them aside for unknown claimants. They also contend that in light of the fact this Estate is likely insolvent, this provision for unknown creditors is not appropriate since in a Chapter 7, the unknown creditors would not be entitled to receive any distribution from encumbered assets. Finally, they contend that this provision is a taking of EFP and BHT's property without consent. The Trustee disputes these contentions and states that her First Amended Plan speaks for itself.

Nothing herein prejudices any confirmation objections that may be available to EFP/BHT or DebtX or any rights, claims or defenses of the Trustee, DebtX or EFP/BHT.

**\*\*\*END OF ORDER\*\*\***

SUBMITTED BY:

*s/Jeffrey R. Barber*

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